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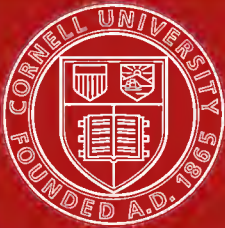
Digest of American income tax cases.



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DIGEST
OF
AMERICAN INCOME TAX
CASES

PREPARED BY
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By LYLE T. ALVERSON

PREFACE

The purpose of this book is to provide in convenient form an index-digest of all decisions of courts in the United States, and of the Attorneys General of the United States, bearing upon questions of income taxation. Since conceivably every controversy of law, with the possible exception of those controversies involving criminal law, or the law of damages, bears in some degree upon the proper solution of a question of income tax law, the scope of this work has been restricted to cases dealing primarily with income tax problems. The book does not, therefore, contain the vast number of cases which have dealt with the ascertainment of income or profits or with other related questions in connection with problems other than taxation. Nor has there been included in that section devoted to practice, all of the cases bearing on internal revenue penalties, although it is true that income tax penalties are governed by principles no different from those controlling similar questions in connection with other taxes. However, when necessary to cover some point of practice commonly met with, cases outside the rigid scope of the work have been included, and it has been my aim to include at least one case, whether or not it is strictly speaking an income tax case, bearing upon every point frequently encountered. While a few cases have been included which are only of a historic value because of a change

in the law, or because of a later conclusive ruling by the Supreme Court, the original plan, that every decision reported dealing directly with income taxation be digested, has been adhered to, for I have felt that not only is it desirable to trace the course of the controversies involved, but that many times, theories advanced by courts of first instance, though disregarded by the higher courts, may prove useful in the same or a different connection.

The work was undertaken in the hope and belief, based on the increasingly practical attitude of the courts, that more real law, and less theory, will in the future serve as a guide in the solution of the many vexing questions which can and do arise in income taxation. If it assists ever so slightly in the accomplishment of that hope, I shall feel that the time necessary for the compilation was well spent.

LYLE T. ALVERSON.

New York City,
February 14, 1921.

FOREWORD

I believe the members of the legal profession will find this Digest a real help in the many problems and cases which are constantly confronting them in the practice of the law to-day. The idea was conceived while I was Solicitor of Internal Revenue. Mr. Alverson discussed with me at that time the great need felt by the lawyers in the Solicitor's office for a comprehensive Digest of opinions dealing with income and profits tax questions. There, experience had shown that no satisfactory Digest was extant; that the various works treating of income and profits taxes largely reflected the views of their respective authors and, in many phases, those of the Department; that in no one work was to be found in convenient and concise form the controlling law, supplementary to the statutes, on this important subject—that which has been handed down by the courts. I suggested to Mr. Alverson that he perfect the reading which he had commenced and make it available to the public.

Naturally a Digest does not treat of disputable questions, but the excellent encyclopedic index and the completeness of the cases digested will afford the careful lawyer an entrance into a field of law not too well explored and serve as a guide to him in one of the most difficult and complex branches of the law. I commend it to the profession as a work carefully,

competently and considerately done, one which reflects the present opinion of the courts on the vexing questions arising under the revenue laws.

WAYNE JOHNSON.

New York City,
February 14, 1921.

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CYCLOPEDIA INDEX

(References are to case numbers)

Income

Income is the gain derived from capital, from labor or from both combined (49) provided it be understood to include profit gained through a sale or conversion of capital assets (11). It may include gifts (17, 109) but does not in the absence of specific provision (62). It is used in the ordinary sense in taxing statutes (24, 222), "as the word is used in every day life" (45), and in common understanding (52). All that comes in is not income (44), since it is a question of substance and not of form (11), but it is not, it seems, a question for a jury except as to amount (1, 37, 54, 55). It imports a flow, and time is essential in its measurement (11) and is said to be the amount of wealth which comes to a person during a given period of time (52). It has been likened to the fruit of a tree (70) and severance from capital is required (11). To be taxable it must be received (11, 17, 55, 289), but receipt may be constructive (2, 3, 18, 28, 37, 38, 71). Thus, payments to stockholders for

Definition

Gifts

Meaning

Must be
received

Exchange of
stock and
property

Conversion
of capital
assets

Measure of
gain

the use of corporate property are income to the corporation (*idem*) and a dividend due but uncalled for is income (86). Being a question of substance, no income results from paper transfers incident to corporate reorganization (1, 55), or mere book entries (16, 20, 44, 59, 74, 75, 180, 187), but an exchange of stock for other stock as a result of corporate reorganization may result in taxable income (34, 48), although an exchange of property for stock works no gain to the corporation (40); nor does an exchange of property for other property (66), under a statute taxing "income." The profits resulting from the realization of gain accruing over a number of years through the sale of capital assets are not "annual" income (14, 198) and have been held to be not income at all (4, 85). See also (279). But such gains have also been held to be income (5, 41, 52, 57, 80, 81). However, only such gains as accrued since the incidence of the respective tax laws are taxable (44, 45, 45-A, 78, 79, 80, 81, 87). The amount thereof is the difference between the value of the assets at the incidence of the act, and the sale price (57), and the former may be shown by any competent evidence, including resolutions of a board of directors (59). On the same principle, the liquidation of claims or

property existing at the incidence of the act is nontaxable (27, 44, 60, 61, 65, 78-81, inc., 87), but see (17). However, the claim liquidated must have been a real and substantial one (9) and although mere conversion of capital results in no income (85) and thus the proceeds of accident insurance are not taxable (32) not every wasting of capital must be recognized in computing income (49, 188); thus a wasting of mineral deposits need not be accounted (7, 8, 181, 183, 184, 185, 188) although it seems the rule is different as to timber wastage (79). The exhaustion of a lease is to be accounted it seems (68, 179), although the Supreme Court disregarded the theory (186, 188). Dividends on corporate stock in ordinary course are income to the recipient, in the absence of specific provisions whether or not paid from pre-existent surplus (24, 35, 36, 42, 46, 47, 69, 197-A), and no allowance will be made on account of the reduced value of the stock after the dividend (24, 69). But dividends declared before the effective date of the act and payable afterward are not taxable (60); and liquidating dividends no greater than the value of the stock at the incidence of the act are capital distributions (85). The true test is whether the dividend is made from cap-

Change in
form only

Waste of
capital

Dividends

- ital or earnings (42). See also (121).
- Dividends in kind Dividends in kind are taxable as income (35). Dividends paid with exempt securities are taxable (111). But mere
- Bookkeeping transfers bookkeeping entries, showing transfers between closely affiliated corporations, are not income (16, 44), although the identity of the corporations must be complete to escape the tax (42, 63).
- Stock dividends Stock dividends are held to be not income (11, 51, 63, 338), except in Massachusetts (52, 72), where the rule has since been changed by statute. The proceeds from the sale of rights to subscribe to stock are income (52). The undivided profits of a corporation were formerly held under a specific statutory provision to be income of the stockholders (6, 21) but this has been declared unconstitutional (11), except where the corporation is used as a shield from taxation (364). The income must have actually been derived (11) and a contingent right to commissions is not therefore taxable (9, 10, 73). In the absence of specific provision, income means money (45), and not the expectation or right to receive it *in futuro* (64); thus, a promissory note not presently due is not income (56, 64), unless it has intrinsic value and is capable of ready conversion into money (58, 66). But the note of a third person stands
- Income means money

differently than the note of an immediate party (56). Income is not derived by rendering services and charging for them (10), although bills or accounts receivable in the regular course of business may be income (78). Without specific provision, accrued but unpaid interest is not income (131, 281, 288, 289, 291, 294), nor are due but unpaid insurance premiums (*idem*), and the amortization of discount at which bonds were purchased is not income (20, 23). See also (76, 146, 278, 281). Travel and expense allowances are income (12, 19, 29), at least as to the excess not spent (12). Alimony is not income (13). Income of husband or wife domiciled in a jurisdiction having the community property system is to be divided equally (33). The value of improvements on leased property is not income to a landlord at the termination of the lease (25, 77), but the rental value of a residence may be taxed as income to the owner who resides therein (245). Crops fed to livestock are not income (61). See also (239). Payment of income to an agent is taxable to the principal in the year of payment (289), but it is not taxable when turned over to the principal (27). Inventories valued at cost or fair market value may be used to reflect income (31), but it has been held that

Accrued
items

Expense
allowances

Husband
and wife

Cancellation
of lease

Payment
to agent

Inventories moneys invested in inventories are to be excluded from profits (388). However, it is immaterial that income has been invested in capital assets (53).

Gain or Loss, Time of Realization

Bonds sold at discount The sale of bonds at a discount by an obligor results in no loss in the year of sale (75), or before payment (76, 146). Cancellation of a lease, giving the landlord possession of improvements erected by the tenant, works no income to the landlord in the year of cancellation (25, 77), but *semble* does in the year of erection (*idem*). Income from the sale of capital assets at a profit, if taxable, accrues in the year of sale (41, 79, 81). Payment in one year for services extending over a period of years is income for the year in which payment is made (82), and a dividend is income when available to the stockholder (86). A dividend declared in one year and payable the next is income of the latter year (209). See also (197-A.)

Cancellation of lease

Sale of capital assets

Payment for services

Dividends

Unfortunate purchase Where a property was purchased for more than its true value, but such fact is not discovered until later, the loss is not a loss of the year of discovery (173) but of the year of purchase; likewise, an

Embezzlement embezzlement works a loss in the year of its occurrence, and not in the year of discovery (87-A).

Sources of Income

To impose a tax, there must be jurisdiction of the person or the income (95, 242). See Constitutionality. The federal government has jurisdiction of its citizens residing in the Philippines and may tax them like citizens in the United States (200). It may tax nonresidents on income from bonds secured by property in the United States, or from stock of domestic corporations, actually held within the United States (90), although the Attorney General thought otherwise (94), because such bonds and stock are property in the United States, but not if the bonds are outside the United States (249, 253). And see (204) and (97). Income from stocks and bonds held outside a state in trust by a nonresident is not from sources within the state, even where the trust is administered under the authority of a domestic court (88). But income accruing in trust within the state for a nonresident is taxable (222). Income from a trust is not from sources within the state because the trustees perform their duties therein, when the income comes in fact from property outside (98). Income from the purchase of milk outside the state, transportation to within, pasteurization, bottling, sale and delivery there, is from sources within the state

Jurisdiction

Income from
bonds

From trusts

Income from
business
operations

(91). To the same effect see (67, 95). But mere purchases within and sales without the jurisdiction do not produce income from within (95); *contra* (100). Purchase without and sales within do (95). Purchase without, shipment within and sales without the state by persons residing therein are not income from sources within (67). Manufacture within and sales without the state produce income from within (67); *contra* (95). A steamship line transporting goods on the high seas to and from the United States receives income from within (93, 95). As to foreign partnership with one member within see (95). A state may allocate income from within and without according to the ratio of tangible property within and without (99). But an allocation which disregards intangibles is incorrect (96).

Steamship
lines

Allocation
of income

Exemptions of Persons and Incomes

Court
receivers

See Constitutionality, Incomes from Interstate Commerce, Judicial Services and Sovereign State Incomes. Without specific provision, incomes accruing to receivers acting under court authority are exempt (107, 119, 124); and the same is true as to incomes accruing in the hands of trustees for unascertained persons (104, 126). *Semble*, a trustee for an ex-

empt institution is exempt (108). A provision requiring the return of incomes of trustees "operating the property or business" of corporations does not reach income produced by a trustee's liquidation of corporate assets (106). Whether or not a corporation is organized for profit is immaterial (18, 102, 155), and a nonprofitable purchasing association is not *ipso facto* exempt (113), nor is a public service corporation (53). The words "fraternal beneficiary society" are to be applied literally (102). A building and loan society is "mutual" even though it issues paid up stock with guaranteed interest, since "mutual" means substantially equal (105), but it is not mutual if in addition it loans to nonmembers and its directors are authorized to retire its stock in their discretion (114). Credit unions, being in substance coöperative banks (specifically exempt) are also exempt (112). A corporation does not escape tax by dissolution (123, 383, 392, 400), nor an individual by death (192, 203). Gifts are not income (62), except where specifically so designated (17). In such case a railroad subsidy is income (109). While it has been held that income from exempt property is exempt (109) since a tax on income is a tax on the property whence it springs (109, 235,

Trustees

Nonprofitable organizations

Fraternal beneficiary society
Building and loan society

Credit unions

Dissolution or death

Gifts

Income from exempt property

Dividends
from holding
companies

237, 238) *contra*, (324), the income from United States bonds is to be included when computing an excise-income tax (110). Under a statute exempting income from property already taxed, the income of a merchant is not exempt though his stock is taxed (125). Incomes paid with property itself nontaxable are, however, taxable (111). Where a statute exempts dividends from "assessed" corporations, those from holding corporations which pay no tax because all income is from exempted dividends, are taxable (120). And where dividends to a holding company are capital distributions, the dividends made by the holding company are likewise capital, and not earnings (121).

Deductions, In General

Compensation

Office
equipment

See Depreciation and Depletion. Salaries paid may be deducted but not a distribution of profits; thus payment under a contract that all profits over 10% shall be paid as salaries is not deductible (139) but the question is whether the payments are of salaries or of profits, and not of reasonableness (147, 150). Attorneys' fees paid in litigation for acquisition of stock are not deductible (140), since capital investments are not deductible (53), but expenditures for new office equip-

ment, even to considerable amount, are deductible (291), and where old property is replaced with new the replacement value of the old may be deducted (129, 130, 132, 135). The cost of new machinery may be deducted where the old is so worn as to be inefficient, even though the old is retained for emergencies (135). But no deduction may be made when a new plant is erected in a different site if the old plant remains without change, even though the total value is not enhanced (133, 135). An expenditure for clearing property in order to raise crops is deductible (135). A surveyor cannot deduct expenditures for books, instruments, etc., necessary to his profession (137). Losses of a man engaged in oil development through embezzlement by his broker of moneys used in stock market speculation are losses in trade and are deductible (127), as are other losses through embezzlement (87-A); likewise as to losses of corporate stock acquired through complicated transactions (128), but losses by one engaged in the bagging business through dealing in cotton futures are not "in trade" and are not deductible (141). The scrapping of a vessel because of requirements of navigation authorities that extensive repairs be made, is not a loss in trade and is not deductible (138).

Replaced
property

Clearing
land

Losses in
trade

	An advance by a parent corporation to a subsidiary to meet losses is deductible (131). The federal income tax of a decedent is not deductible by his estate in computing estate tax (134), nor is the federal estate tax deductible from the estate's net income (143). The New York transfer tax is likewise not deductible from the incomes of the legatees (145). Bad debts are deductible, and a merchant's attitude toward them is good evidence as to their worthlessness (149). More or less latitude should be allowed as to when they become worthless (171), but a sole stockholder cannot deduct an amount owing him by the corporation by a mere charge to profit and loss (172).
Income and estate taxes	
Bad debts	
Amortization	Bond obligors may not deduct as amortization an aliquot portion of the discount at which the bonds were sold (146, 76). Nor can they deduct the entire amount of the discount in one year (75). Corporations may not deduct the value of contributions to the Red Cross and kindred organizations (142), nor taxes paid on their behalf by another (148). A contingent loss is not deductible (334-A).
Contributions	
Contingent reserve	

Deduction, Restriction on

A specific limitation as to deduction of interest precludes its deduction as a business expense or otherwise (154, 160, 161),

and it is immaterial that the taxpayer be engaged in a business in which large payments of interest are a normal incident (152, 159). An express allowance of deductions for taxes wherein certain kinds of taxes are named, precludes allowance of taxes of kinds other than those named (161, 214). Where interest allowable as a deduction is limited to that paid on an indebtedness not exceeding paid-up capital stock, the latter term means the par value of the stock (156) plus the amount paid on part paid stock, excluding premiums paid (162). Cash advances to a corporation without stock actually having been issued cannot be included (155).

Deduction by Banks of Taxes on Shares

It is practically unanimously held that taxes levied by states against shares of bank stocks and required to be withheld from dividends may not be deducted by the banks (164, 165, 167, 168); but see (169).

Deduction of Losses

Loans or accounts receivable which have become worthless may be deducted as losses (171), but the entry made by a sole-stockholder-creditor in his books is not enough to establish a loss (172). *Seem*, the purchase of property for more

than its true worth works a loss to the purchaser (173). The peculations of a defalcating employee are deductible (87-A).

Depreciation

Depreciation
of bonds
and stocks
Depletion

Change in
neighborhood

In addition
to main-
tenance

A deduction on account of depreciation cannot be made as a "loss" or an "expense" (175), but it has been allowed without specific provision (132, 176). The term includes a loss in value of bonds and stocks (176, 177) but not depletion of natural deposits (49, 184, 185, 188); *contra*, (180, 187). But an allowance for exhaustion, wear and tear excludes an allowance for loss in value due to change in the neighborhood of an apartment building (174). An allowance for depreciation may be deducted in addition to ordinary repair and maintenance expenses (178), but not if depreciation is offset by appreciation or repairs so that the value of the whole is no less (176-A).

Depletion

Depletion is not a matter of right, since every wasting of capital need not be accounted (49, 181, 183, 184, 188), and "depletion" is not included in "depreciation" (49, 184, 185, 188); *contra*, (180, 187). A lessee *a fortiori* has no right to depletion (182, 186, 189) except where the

legislature specifically provides (182-A). The discovery value allowed under the federal act of 1918 may be allowed only to the person in possession (182-A), but in the case of a lease is to be equitably apportioned between lessor and lessee (*idem*).

Statutory Construction

A tax levied on interest or dividends but requiring the payor to withhold the amount of the tax is a tax on the debtor or shareholder (199, 203-A, 204, 205, 209, 212, 276); *contra*, (191, 211, 216). And see (190). A tax on compensation for "employment" does not reach the income of a minister of the gospel (210). An act of Congress providing that a taxing act shall be "construed" to be extended operates as an extension (197-A, 213). Executive construction of a statute is entitled to great weight (89), especially where it has long prevailed (218), and to respectful consideration (219, 307), but it has been said a Treasury Decision is not entitled to great weight (129). The Secretary or the Commissioner cannot, however, broaden the law by construction, and regulations which seek to do so are void (56, 129, 306, 389, 398). The reenactment of a statute by Congress does not adopt the Commissioner's

Tax on
dividends
or interest

"Employ-
ment"

Executive
construction

Limitation
on assess-
ment

construction thereof (334-A). The three-year limitation imposed by the Act of 1909 and similar acts does not prevent suit by the government but only assessment (217, 220, 221, 334-A), and the term "false or fraudulent" as there used means "incorrect" or "fraudulent" (73, 163, 164, 167). The repeal of a statute without a saving clause prevents collection of accrued taxes (221). But see (12). A statute assessing a tax on income received in the year "next preceding assessment" means the state's fiscal year shall be used (195), but a statute cannot be construed to be retroactive by implication (194). Income is property and the provisions of law relating to the taxation thereof are applicable to the taxation of income (201, 235, 247); *contra*, (195, 233, 240, 268). A pawnbroker's interest is interest received from money at interest rather than from dealing in personal property (196). The net income returned to the federal government includes the excess profits tax (207). But see (309). "Assessor" will be read as "collector" when necessary to effect the legislature's intention (214). When the legislature changes an act after dispute, making it conform with one or the other of two contentions, it is evidence that the contention adopted always was the law

Income is
property

Change in
act after
dispute

(104, 119, 302); that it never was the law (24, 62, 161). See also (210). In case of doubtful meaning, taxing statutes are to be construed most strongly against the government (13, 115, 240, 301, 302, 303), since a revenue law is classified as penal (210), but it has been said the principle of strict construction against the government no longer obtains in federal courts (89). The sense in which tax laws are strictly to be construed is that no tax can be imposed by courts or executives (295), and courts cannot undertake to adjust inequalities which arise between two taxpayers where the act is otherwise valid (307).

Doubtful
meaning

Constitutionality

A graduated income tax does not take property without due process of law or deny equal protection of the law (223, 225, 230, 236, 241, 247, 251). Such a tax is not void as being double taxation where the property from which the income springs is also subject to tax (125, 223, 232, 245), although *semble* there is a presumption against an intention of the legislature to tax income from property itself taxed (390), and an intention to tax the same income twice must be expressed in clear and unmistakable terms (282). But it is not invalid double taxa-

Due process

Double
taxation

Power to
classify

Classification
of nonresi-
dents

Joint-stock
associations

tion to assert an excise and an income tax with reference to the same activity (227, 228, 231, 255). While a legislature's powers of classification are broad and are subject to no censure unless the classification is manifestly unjust, arbitrary or whimsical (224, 239) and a classification of persons according to their incomes is reasonable (233), an income tax law which taxes domestic corporations doing business within and without the state but exempts those doing business only without the state accomplishes unreasonable classification (230), although a discrimination may properly be made between corporations deriving all of their income from sources within the state and those deriving only a part therefrom (228), and the fact that nonresidents are allowed deductions only of losses within the state while residents are allowed to deduct all losses does not violate the privileges and immunities clause (241). As to taxation of nonresidents generally, see (241, 242, and 251). Joint-stock companies and associations are properly classified with corporations (229). But a law which exempts incomes below \$2,000 and allows no exemption whatever to those in excess of that sum is unconstitutional (226), although the fact that an individual's surtax begins with

the fourth thousand, while that of a corporation begins with the first is reasonable (224), as is an exemption of \$1,000 to individuals and nothing to corporations (236, 239), and such exemption is not invalid as arbitrary where given to all families regardless of size (239), nor is it illegal classification to tax a family as a unit (245). An exemption of state salaries, real estate rentals and farmers' incomes is also valid (247), and there is no objection to taxing differently those persons who have paid real or personal property taxes (233). Likewise, schools, colleges and fraternal benefits societies may legally be exempted from income taxation (236). Retroactive operation of an income tax does not render it void (192, 215, 252, 400) and Congress may levy a prospective tax measured by past income (213), but a statute not declared to be retroactive in operation is not to be made so by implication (194). A constitutional provision against retroactive legislation renders inoperative a law passed in May so far as concerns income already earned (243) although a strong dissenting opinion was based on the ground that a year's income is a unit which comes into existence only at the end of the year (*idem*). Jurisdiction, either of the person or the income, is

Exemptions
of classes

Retroactivity

- requisite to the imposition of an income tax (95, 242). See Sources of Income. Citizens are taxable when residing in the Philippines as other citizens (200).
- Nonresidents There is no jurisdiction to tax interest on bonds of domestic obligors held by nonresidents at the place of their residences (97, 249, 253), but see (204) affirmed (211) on ground tax was an excise tax on the obligor; *contra*, if the bonds are held in the United States (90) although the Attorney General disagreed (94). As to jurisdiction over income from trusts and business operations see Sources of Income. The Sixteenth Amendment did not enlarge the power of taxation but only removed the requirement of apportionment (225, 257, 261) said in the Pollock cases to be present (237, 238), but see (244). Income taxes are not beyond the constitutional provisions governing the taxation of property (201, 235, 247); *contra*, (195, 233, 240), since income is property (*idem*); therefore, an authorization to levy property taxes is sufficient to sustain an income tax (247); *contra*, (240).
- Sixteenth Amendment
- Income is property
- Test is practical operation
- The constitutionality of an income tax law depends upon its practical operation and effect and not on mere theoretic distinctions (241). There is no violation of due process in the requirement that appeal

to the Commissioner must be taken before suit (365).

Constitutionality: Interstate Commerce and Exports

It is generally agreed that a tax on income from operations in interstate commerce is not unconstitutional (67, 99, 254, 255, 258); and the same result is reached in the case of income from the exporting business (93, 256, 257).

Constitutionality: Judicial Salaries

Judicial salaries are doubly protected from income taxation: the sovereign which is served may impose no income tax because such a tax would conduce to the dependence of the judiciary on the legislature (261, 263, 264, 265, 266), see also (267) and the federal (or state as the case may be) sovereign may not impose such a tax because the one sovereign may not embarrass the other by taxing its instrumentalities (259, 262, 268). But in Wisconsin it was held that a constitutional amendment authorizing a tax on "incomes" was broad enough to allow of a tax on state judicial salaries (248). An income tax may apply to judges taking office after the effective date of the taxing statute, although there is a presumption against such construction (266). The Act of 1918, however, so operates (266-A).

Constitutionality: Sovereign State

The federal government may not levy an income tax on the salaries of state officers (259, 270, 275, 277); nor may the state levy such tax on federal officers (262, 268, 269). But a state may tax the salary of a federal *clerk* (271). The exemption ordinarily allowed to taxpayers may not in the case of state (or federal) officers be applied first to the salary received for serving as such, thus in effect depriving them of their exemption (277). The federal government may not tax the income of a state or agency thereof derived from governmental activities (272) and there is a presumption against extending such taxation even to nongovernmental activities (*idem*). Assistance to a railroad is a governmental activity and interest from money loaned or invested for such purpose is not taxable (272, 273, 276), but the receipt of money for distribution to the poor, to aid science and literature, etc., is possibly taxable as income (276). The true distinction lies between those activities which can only be carried on by the state, and others (229). A special assessment district created for the improvement of streets, drainage, etc., is a "political subdivision" of a state and it seems constitutionally exempt (274).

Governmental
activities

Mutual and Other Insurance Companies

Mutual insurance companies are not taxable with reference to the excess of premiums over insurance cost returned to policy holders (278, 279, 280, 281, 282, 291, 294), whether or not the insured elects to apply such excess to new insurance (287), and it is immaterial whether the credit made to the insured is by way of contract (297) or required by statute (293). But the premium receipts of a mutual trade society are income (285). The deduction allowed of net additions to reserve funds required by law is restricted to additions to insurance reserves, and thus additions to reserves for business contingencies are not deductible (289, 292). But an addition to a reserve to meet policies matured but unpaid at the option of the insured is deductible (291), as is an addition to a reserve maintained in anticipation of payment of installment payment life policy, the insured being deceased (294), but not if such addition is offset by the reduction in another reserve at the time of the death (281). The size of the company's surplus is immaterial (284), and it does not matter whether the reserve includes also policies on which premiums have not been paid (297). A reserve is "required by law" when required by the regulations of a

Insurance
dividendsInsurance
reservesReserves
required
by law

Premiums
paid back

Accrued
premiums

state insurance commissioner acting under competent statutory authority (284, 289, 297). A decrease in reserves, additions to which are deductible, is income to the extent it increases the free assets of the company (289). The exclusion from gross income of premiums paid back within the year merely means only premiums actually received shall be accounted (296). Accrued and due premiums are not income until paid (281, 287, 291, 294).

Taxable Entities

A Massachusetts trust is not a joint-stock association (299, 300), and a partnership is not to be so classified because one of the partners is a corporation, and participates in the business through a board of directors (301). In the absence of provision a partnership is not a taxable entity (302, 303); nor are receivers acting under court orders (107, 119, 124), or trustees of property receiving income for unascertained persons (104, 126).

Excess Profits Tax

The excess profits tax of 1917 is essentially an excise tax and should comprehend only the income from the main or principal business (308). Whether a man has more than one trade or business is a

question for a jury (304). A partnership has "no invested capital or no more than a nominal capital" where no capital is used in the ordinary business but is used in casual transactions (308) and it is immaterial that profits are undrawn (*idem*), but it has been held individual property pledged at banks to secure partnership credits caused the firm to have invested capital (305). A corporation whose only capital consists of a patent has no invested capital (306). A stock dividend has no effect on invested capital (307). As to the manner of computing graduated profits taxes, see (197).

Covenants to Pay Income Taxes

The following covenants have been held to require payment by the lessee or bond obligor of the income tax of the lessor or bond obligee:

To pay:

"all taxes upon or against the rent" (317).

"any taxes or excises * * * laid or assessed upon or against the rent, * * * whether as rental or as income" (318).

"all taxes upon the yearly payments herein agreed to be made, for which the lessor would otherwise be liable" (320).

"rent without any deduction for taxes" (321).

"all taxes lawfully imposed upon the lessor or for which the lessor would be liable on account of its earnings or profits" (322).

"all taxes upon the rent payable * * * for which the lessor would otherwise be liable" (323).

"taxes in respect of the rent" (325).

"taxes * * * on the yearly rent" (327).

The following covenants have been held not to require payment by the lessee or bond obligor of the income tax of the lessor or bond obligee:

To pay:

"any expense incidental to the issue of the bonds" (310).

"all taxes assessed or imposed on the demised premises or any part thereof or on the business there carried on or on the receipts gross or net derived therefrom" (311, 319).

"principal and interest without any deduction, defalcation or abatement to be made of anything for or in respect of any taxes, charges or assessments whatsoever" (312).

"all taxes payable for or in respect of the leased premises" (313).

"* * * all taxes or assessments, special or otherwise, and public charges of every kind and nature that shall or may be taxed or assessed against the (lessor) company or its property" (314).

"interest and principal without any

deduction * * * for or in respect of any taxes, charges or assessments whatever" (315, 316).

"principal and interest without deduction from either such principal or interest, for any tax or taxes, which (it) may be required to pay or retain therefrom, under any present or future law, (it) agreeing to pay such tax or taxes" (326).

"all taxes for or in respect of the premises or any part thereof" (328).

Practice

Suit will not lie to recover taxes until payment has been made and claim for refund has within two years been filed with and rejected by the Commissioner (289, 348, 372, 375) and an indorsement of protest on the check or on the return is not sufficient (348), although an irregular claim stops the statute of limitations (377). This requirement is not obviated by the filing and rejection of a claim for abatement before payment (372), but see (127, 338, 364, 397). However, a filing with the local collector is sufficient (359, 378). The time within which claim may be filed dates from the time of payment of the tax (374, 375). Suit must be brought within two years from the time the claim is rejected, or from the lapse of six months from filing, whichever occurs first (374, 289). But see

Necessity
of claim
for refund

Limitation
on time
of filing

Nature of suits against collector	(373). The statutory bar is not removed where the government increased the original assessments although suit to recover moneys paid on the second assessment is in time (289, 332). Suit may be brought either against the collector or the United States (334-B). Suits against the collector are in assumpsit on an implied contract (340, 343), and although it is sometimes said the United States is the real defendant (340, 374), but see (333), interest may be recovered from a collector without specific statutory authority (177, 373, 374). If appeal is taken, interest may be had until appellate decision (337), but a suit may not be maintained for interest alone (352). There is no assumpsit, however, where the collector is under a statutory duty to pay the tax immediately into the Treasury (6). A claim certified as allowable by the Commissioner has the effect of an account stated and there is no review (335, 359, 362, 363), but he may reconsider the allowance at any time before payment (346). His decision on any fact within his jurisdiction is final unless the case be one in which suit against the collector is allowable (335), and whether the claim was filed before the statute of limitations had run is such a fact (<i>idem</i>). While in case of a collector-defendant's
Interest from collectors	
Allowance of claim by Commissioner	
Death of collector	

death, suit may be continued against his representatives (343), a suit may not be instituted against his successors in office (343, 344), but see (287), unless suit has been filed. A claim for refund is not a suit (344). Nominally, no suit may be maintained to recover taxes unless they were paid under protest. But when both the collector and taxpayer understand that the tax is paid under compulsion the rule does not apply (349), and a verbal protest is sufficient if noted on the collector's receipt (*idem*). Since the Act of 1918, suit is a matter of right (197), and in any event compliance with the regulations coupled with a claim for abatement is sufficient to avoid the rule (*idem*). Costs may be recovered where the rules so provide (334), and even though it is argued the United States is real defendant, when a suit originates in a state court allowing costs they are allowable in a federal court (*idem*). But federal regulatory acts are binding on state courts (6). Corrections in favor of the government may be made in a suit brought by a taxpayer against a collector (340). A court will deal only with the theory on which tax was collected (338), although it is said the real question is whether in good conscience the plaintiff should prevail (340) and see (61). The burden is of

Payment
under pro-
test

Costs

course on the taxpayer to make his case (174).

Enjoinder
of taxes

As a general rule an injunction will not lie to prevent the collection of an income tax (86, 364, 365, 366, 368), but if independent equities were presented it seems a bill would lie (365). However, more than a bare claim of unconstitutionality or that allowance of the bill will prevent a multiplicity of suits must be made (365). It must be entirely clear that the tax is unjustifiable (368), and any doubt is sufficient for a denial of the bill (*idem*). But a law which provides that all of a taxpayer's property shall be subject to a lien until the assessment is satisfied gives sufficient ground for the intervention of equity on the ground of removal of a cloud on title (241, 242). It seems too that the general rule may be circumvented in the case of corporations by a stockholder's bill to restrain the corporation from paying the tax (225, 237), although at least one court has held otherwise (369). Bills to enjoin penalties are in the same class as bills to enjoin taxes (367). And it is held that the word "restrain" as used in Section 3224, R. S., was intended in the broad popular sense of hindering or impeding; thus a suit to set aside a sale of land made

Stockhold-
er's bill

Meaning of
"restrain"

to enforce collection will not be entertained (366).

The government is not confined to statutory methods of collection but may sue for unpaid taxes (217, 220, 221, 334-A), its remedy being an action of debt (*idem*). The statute of limitations does not operate against the government (356). But see Section 250 (d), Act of 1918. If a corporate taxpayer has since dissolved, the government may follow corporate assets into the hands of volunteers (392, 400). The government's claim for unpaid taxes ranks ahead of general creditors of a bankrupt estate but after administration expenses (336), and no distribution to creditors can be made until the taxes are satisfied (342).

Government
may sue

Bankrupts

The Commissioner with the advice of the Secretary may compromise cases arising under the internal revenue laws (381, 382), except those being pressed against the government (379). While no compromise may be effected of taxes legally due from a solvent taxpayer (376), penalties and interest may be compromised whether or not the taxpayer is solvent (380), and liberal compromises should be effected of penalties for failure to make returns when no tax liability exists (341). Although the law vests authority to compromise in the Commis-

Compromises

sioner, the payment of tax and an amount in compromise to a revenue officer under agreement that the matter is closed prevents criminal prosecution, especially where the amount is long retained in the Treasury (381, 382). Whether a compromise was effected is a question for a jury (381).

Executive
construction

As to authority and effect of executive construction, see Statutory Construction.

AMERICAN INCOME TAX CASES

Case No. 1

Alpha Portland Cement Company v. United States,
261 Fed. 339 (C. C. A., 3d Circ.) 1919. Act of 1909.

(1) There was no income where a corporation, pursuant to a scheme of reorganization, organized another corporation, conveyed to it properties constituting all its assets, receiving therefor its entire capital stock, of greater par value than the price originally paid for the properties by the first (vendor) corporation, distributed the shares, after formally valuing them at par, among its own stockholders, and then effected a merger between the two corporations.

(2) When one party's evidence standing alone and unexplained shows profits, yet when explained by evidence of the other party, which is not inherently unreasonable, improbable or inconsistent with that of the first party, and the whole evidence is susceptible only of the inference that there was no profit, the trial judge should give binding instructions to the jury so to find.

Reversing 257 Fed. 432 and 242 Fed. 978.

Case No. 2

Anderson v. Morris & E. R. Company,
216 Fed. 83 (C. C. A., 2d Circ.) 1914. Act of 1909.

The notion that a corporation is an artificial entity, distinct from the members who compose it, is a fiction of the law which the courts recognize for some purposes and disregard for others. The fact that a lessee pays rent, not to the corporate entity but to the stockholders

and bondholders of the corporation, cannot prevent the inclusion in the gross income of the corporation of the money so paid, and the corporation is subject to tax with respect thereto.

Case No. 3

Blalock v. Georgia Railway and Electric Company,
246 Fed. 387 (C.C.A., 5th Circ.) 1917. Act of 1909.

A corporation which has leased all of its property to another corporation upon consideration that the latter will pay fixed amounts to its stockholders in lieu of rent, is nevertheless subject to tax on the amounts so paid as its income, since though there is a difference in entity between the corporation and its stockholders, the latter are the real parties in interest, and receive the rents in any event for the use of the lessor corporation's property.

Case No. 4

Brewster v. Walsh,
268 Fed. 207 (D. C. Conn.) 1920. Act of 1916.

(1) Loss of interest on money invested in corporate bonds is not an element of cost of the bonds to be accounted when determining the value thereof for purposes of ascertaining gain or loss.

(2) The difference between the value of investment securities on March 1, 1913, and the amounts received for such securities when sold in 1916 is not taxable as income to the owner and seller of such securities, who is not a dealer therein.

Case No. 5

Cleveland, C., C. & St. L. Ry. Company v. United States,
242 Fed. 18 (C. C. A., 6th Circ.) 1917. Act of 1909.

The difference between the fair market value as of January 1, 1909, of stock purchased before that date and sold afterward, and the sales price, is income for the year of sale.

Affirmed 247 U. S. 195.

Case No. 6

Collector v. Hubbard,
79 U. S. 1 (1870) Act of 1864.

(1) A statutory duty on collectors to pay immediately into the Treasury all moneys collected, does not permit of an implication of a promise by the collector to repay any such moneys illegally collected, and the right to sue a collector under such circumstances is statutory only.

(2) The prohibition of suits in any court before appeal had to the Commissioner bars suits in state as well as federal courts.

(3) There is no such thing as a vested right to sue the government and legislation regulating such suits is effective as to all controversies save those already in suit.

(4) A statute providing that an individual stockholder should include as income all corporate gains or profits to which he should be entitled, "whether divided or otherwise" embraces and taxes his aliquot share of yearly profits whether or not distributed as dividends for "annual gains or profits whether divided or otherwise are property and therefore are taxable."

Case No. 7

Commonwealth v. Ocean Oil Company,

59 Penn. 61 (1868) State Act of 1864.

An oil corporation required by statute to return for taxation its "net earnings or income" may not subtract from gross income in arriving thereat the amount of paid-in capital, particularly where the gross income less operating expenses has been paid out in dividends; and the calculation used for dividend payments is the correct method by which to determine net income, even though the oil of the company is becoming less in quantity through recovery and sale.

Case No. 8

Commonwealth v. Pennsylvania Gas and Coal Company,

62 Penn. 241 (1869) State Act of 1864.

The value of coal removed by a mining company in the course of operation is not to be deducted from receipts when ascertaining "net income" subject to taxation, and such net income is properly found by subtracting from gross receipts the expenses incurred in operation.

Case No. 9

Edwards v. Keith,

224 Fed. 585 (D. C., E. D. N. Y.) 1915. Act of 1913.

(1) An insurance agent who is paid a commission upon the writing of a policy, and further commissions as and when the yearly premiums are paid by the insured is not presently liable for income tax with respect to the amounts which will be received in the future, since they are contingent on payment by the insured of his premiums. This is

not inconsistent with the holding in *In re Wright*, 151 Fed. 361, that under such a contract the right of the agent to receive such future and contingent premiums is a vested property right under the Bankruptcy Law.

(2) It is immaterial to the right to tax the commissions as income as and when received that the right to the income taxed vested prior to the passage of the law or that the income is partly the result of expenditures made before that time.

Affirmed 231 Fed. 110; certiorari denied, 243 U. S. 638.

Case No. 10

Edwards v. Keith,

231 Fed. 110 (C. C. A., 2d Circ.) 1916. Act of 1913.

An insurance agent who is paid one commission at the time of writing a policy and a further commission when the successive premiums are paid, derives no income until such premiums are paid, and he receives his further commissions, because there is no certainty that the sum conditionally promised for an ensuing year will ever be paid or will accrue or come due, notwithstanding Treasury Department regulations that unpaid accounts, charges for services, etc., if good and collectible should be included. Thus, by way of illustration, a lawyer who argues a case in 1915 should not include as taxable income any charge on account thereof since his client might die insolvent on January 1, 1916. One does not derive income by rendering services and charging for them.

Case No. 11

Eisner v. Macomber,

252 U. S. 189 (1920). Act of 1916.

(1) Income may be defined as the gain derived from capital, from labor, or from both combined, provided it be understood to include profit gained through a sale or conversion of capital assets.

(2) What is income is a question which must be determined in each case according to truth and substance without regard to form.

(3) Income is essentially a gain or profit in itself of exchangeable value, proceeding from capital, severed from it, and derived or received by the taxpayer for his separate use, benefit and disposal.

(4) A stock dividend takes nothing from the corporation and gives nothing to the stockholder, and a tax on such dividends is a tax on capital increase and not on income and therefore invalid unless apportioned.

(5) Congress may not tax to corporate stockholders without apportionment their interests in accumulated earnings prior to dividend declared.

Dissenting opinion on the following grounds:

(1) A dividend in cash coupled with an option to purchase stock is clearly taxable; a stock dividend differs from this only in form, and should therefore likewise be taxable.

(2) Stock dividends are commonly regarded as income.

(3) A dividend of bonds or preferred stock is taxable, and there the so-called difficulty urged in the case of taxation of a distribution of common stock, that there is no segregation or division of gain, is present, and if disregarded in the one case should be disregarded in the other.

(4) A statute should not be declared unconstitutional, if on any reasonable grounds it can be held to be constitutional.

Case No. 12

Galm v. United States,

39 Ct. Cls. 55 (1903). Act of 1862.

(1) The excess of travel allowances over amounts actually expended for travel is taxable income under the Act of 1862.

(2) Where the tax attached the right of the government was not taken away by the repealing act.

Case No. 13

Gould v. Gould,

245 U. S. 151 (1917). Act of 1913.

(1) Alimony paid monthly by divorced husband to his former wife does not decrease his net income subject to income tax under the Act of 1913, nor does it constitute taxable income in the hands of the wife.

(2) Taxing statutes should not be extended by construction beyond the clear import of the language used, and in case of doubt they are construed most strongly against the government.

Case No. 14

Gray v. Darlington,

82 U. S. 63 (1872). Act of 1867.

An act taxing annual net income does not reach profits derived from the sale of bonds held during a period of four years, since they are not annual gains. Such an act ap-

plies only to those gains, profits and income which are strictly acquisitions made during the year preceding that in which the assessment is levied and collected, unless it is otherwise provided. "The mere fact that property has advanced in value between the date of its acquisition and sale does not authorize the imposition of the tax on the amount of the advance. Mere advance in value in no sense constitutes the gains, profits or income specified by the statute. It constitutes and can be treated merely as increase of capital."

Case No. 15

Gulf Oil Corporation v. Lewellyn,

242 Fed. 709 (D. C., W. D. Penn.) 1916. Act of 1913.

A parent corporation owning all of the stock of its subsidiaries derives no taxable income by reason of the declaration after 1913 of dividends out of earnings accumulated by the subsidiary corporations prior thereto, "because they were a distribution of surplus earnings arising through a period of years and which had accrued to, and the equitable ownership thereof was vested in the plaintiff prior to January 1, 1913, and such earnings were not intended by Congress to be subject to taxation."

Reversed 245 Fed. 1; affirmed 248 U. S. 71.

Case No. 16

Gulf Oil Corporation v. Lewellyn,

248 U. S. 71 (1918). Act of 1913.

Where five subsidiary corporations, all of whose stock was owned by the taxpayer-corporation, declared dividends in 1913 of profits earned before that year, entering on their books a credit to the amount of the dividend but

transferring no cash, no tax liability was incurred by the parent corporation by reason of such declaration, as in substance the dividend so declared was a mere bookkeeping transfer of that which the taxpayer-corporation already owned, and "that practically had been converted into capital."

Reversing 245 Fed. 1; affirming 242 Fed. 709.

Case No. 17

Halstead v. Pratt,

14 Haw. 38 (1902) Hawaiian Act of 1901.

(1) The value of a bequest or inheritance must be included in gross income under a statute requiring such to be included unless "otherwise taxed as such," and the legislature intended, from the language of this law, to tax as income the value of bequests and inheritances unless taxed as such by the laws of Hawaii.

(2) A law which requires the inclusion in gross income of money and personal property "acquired by gift or inheritance" operates to require the inclusion of the value thereof in gross income where the testator died before the passage of the Act but the inheritance was not actually paid over until thereafter, for "acquired" should be read to mean "received," and it is immaterial that the legal title was received by the taxpayer at the death of the testator, before the incidence of the Act.

Dissenting opinion as to Point One.

Case No. 18

Houston Belt & Terminal Railway Co. v. United States,
250 Fed. 1 (C. C. A., 5th Circ.) 1918. Act of 1909.

(1) A corporation is none the less liable for taxation measured by its income because it was organized by four other railroad corporations as a convenient means for providing terminal facilities and was not intended to earn profits and pay dividends.

(2) Where a corporation leases its property to other corporations on consideration that the latter will pay to the first corporation's creditors interest on its bonds, such payment is to be considered as income of the lessor corporation, and is to be computed as if the payments were made to the lessor corporation as rent and by it paid to the creditors as interest.

Case No. 19

In re Hayes,

16 Haw. 796 (1905). Hawaiian Act of 1901.

A taxpayer must include in gross income amounts allowed and paid him by his employer for his expenses during the year, since such amounts form "an actual part of the taxpayer's income."

Case No. 20

Industrial Transit Company v. Walsh,

222 Fed. 437 (D. C., D. Conn.) 1915. Act of 1909.

A taxpayer owning bonds or other securities, and who writes up the value on his books of such securities, does not thereby add to his net income within the meaning of

the Act of 1909, since such increase was not income of that year, but had extended over a period of years.

Case No. 21

Ex parte Ives,

Fed. Cas. 7114 (D. C., D. Conn.) 1865. Act of 1864.

A provision that the "gains and profits of all companies . . . shall be included in estimating the annual gains, profits or income of any person entitled to the same, whether divided or otherwise" does not require a stockholder to return as part of his income his proportionate share of company profits, before dividends are made, since before that time he is not "entitled to the same," at least where the corporation is using such gains in the course of its business and without intent to defraud the United States.

Case No. 22

Lewellyn v. Gulf Oil Corporation,

245 Fed. 1 (C. C. A., 3d Circ.) 1917. Act of 1913.

A corporation which owned all of the stock of five subsidiary corporations on which a dividend was declared in 1913 of earnings accumulated prior to that time was nevertheless taxable with respect to the amount of the dividend declared, since each corporate entity was distinct from the others, and as to the taxpayer the dividends were income in the year received.

Reversing 242 Fed. 709; reversed 248 U. S. 71.

Case No. 23

Lumber Mutual Fire Insurance Company v. Malley,

256 Fed. 383 (D. C. Mass.) 1916. Act of 1909.

A corporation which purchases bonds at premium and discount, and each year adds to or subtracts from, as the case may be, the book value of the bonds, an amount equivalent to the theoretical increase or decrease in value due to approaching maturity receives no gain and sustains no loss thereby.

Case No. 24

Lynch v. Hornby,

247 U. S. 339 (1918). Act of 1913.

(1) Under the Sixteenth Amendment Congress is empowered to tax as income everything that becomes income in the ordinary sense of the word after March 1, 1913. Thus dividends declared in the ordinary course of business after the effective date of the Act are taxable as income to the recipient whether paid from earnings made thereafter or a surplus existing theretofore, even though the payment reduces by so much the intrinsic worth of the stock, and even though the payment represents in part or in whole a conversion into cash and a distribution of the value of an inchoate and intangible right which the stockholder had in the undivided assets of the corporation on March 1, 1913.

(2) In view of the pendency of this litigation at the time of the adoption of the Act of 1916, the express exception made in that Act of dividends made from earnings acquired before March 1, 1913, strengthens rather than weakens this conclusion.

Reversing 236 Fed. 661.

Case No. 25

Miller v. Gearin,**258 Fed. 225 (C. C. A., 9th Circ.) 1919. Act of 1913.**

(1) Where a lessee who in 1907 erected a building on land leased for a period of 23 years, which building under the terms of the lease became the property of the lessor when erected, defaulted the lease in 1916 and the lessor then gained possession of the land and the building, the value of the building was not income of 1916 to the lessor, since he acquired nothing save the possession of that which became his in 1907. The time the income was derived was the time the completed building was added to the land. "At that time it represented a prepayment to the lessor of a portion of the rental, distributable over a period of 23 years."

(2) Doubt should be resolved in favor of the taxpayer. Certiorari denied, 250 U. S. 667.

Case No. 26

New Orleans v. Hart,**14 La. Ann. 803 (1859). Local Act of 1856.**

"Income" as used in the Act of 1856 is money received in compensation for services, such as wages, commissions, brokerage, etc., and is totally different from the fruits of capital invested in merchandise, stocks, etc.

Case No. 27

Northern Pacific Railway Company v. Lynch,**T. D. 3048 (D. C. Minn.) 1920. Act of 1909.**

(1) Payments to a parent corporation made in fulfillment of a contract between it and its subsidiary whereby

the latter agreed to carry on work and pay the net proceeds thereof to the parent, are not income to the parent corporation and they are not to be regarded as dividends even though the parent owns all of the subsidiary's stock, since the subsidiary is the agent of the parent, and tax liability on account of such earnings has been satisfied by the subsidiary corporation's return and payment of taxes.

(2) Proceeds of claims definitely ascertained before January, 1909, but liquidated in 1913 are not income for the year of liquidation.

Case No. 28

Northern Railway Company v. Lowe,
250 Fed. 856 (C. C. A., 2nd Circ.) 1918. Act of 1913.

A railroad company is subject to the tax imposed by the Act of 1913, whether or not it is engaged in business. Where it has leased all of its property to another corporation which in lieu of rent pays directly to the lessor's stockholders a fixed dividend on its stock and interest on its bonds, its income includes the amounts so paid.

Case No. 29

21 Opinion Attorney General, 112,
Rendered by Richard Olney, January 2, 1895. Act of 1894.

Under the Act of 1894, mileage and commutation of quarters paid to officers of the United States Army are to be considered as parts of the incomes of such officers, and are to be added to other income in order to ascertain the total income.

Case No. 30

31 Opinion Attorney General, 213,

Rendered by John W. Davis, Acting, January 26, 1918. Acts of 1916 and 1917.

Although it is the duty of every person to disregard an Act of Congress in plain violation of the Constitution, yet when the alleged violation is not plain, the Act must not be disregarded but followed until set aside by the Supreme Court. That court did not in the case of *Towne v. Eisner*, 245 U. S. 418, in plain terms declare Congress to be without constitutional power to tax stock dividends, but held only that Congress had not taxed them by the Act of 1913; the tax on such dividends specifically imposed by the Acts of 1916 and 1917 should therefore be levied and collected.

Case No. 31

30 Opinion Attorney General, 301,

Rendered by T. W. Gregory, June 26, 1918. Act of 1916.

Inasmuch as the method of computing net income by taking into account inventories of goods valued at cost or fair market value, whichever is lower, cannot be said not to reflect clearly true income, the Commissioner with the consent of the Secretary may permit by appropriate regulations the filing of returns computed on this basis. This rule is applicable as well to dealers in securities.

Case No. 32

31 Opinion Attorney General, 304,

Rendered by T. W. Gregory, June 26, 1918. Act of 1916.

The proceeds of an accident insurance policy received by an individual on account of personal injuries sustained by

him through accident "do but substitute, so far as they go, capital which is the source of *future* periodical income. They merely take the place of capital in human ability which was destroyed by the accident. They are therefore 'capital' as distinguished from 'income' receipts," and are exempt from income taxation.

Case No. 33

Opinion Attorney General, T. D. 3071,

Rendered by A. Mitchell Palmer, August 24, 1920. Act of 1918.

The earnings of husband and wife domiciled in Texas are community income, and they may, in rendering separate income tax returns, each report as gross income one-half of the total earnings of both, one-half of the total income from separate property and one-half of the total income from property owned by the community.

Case No. 34

Osgood v. Tax Commissioner,

126 N. E. 371 (Mass.) 1920. State Act of 1916.

(1) A taxpayer who exchanged corporate stock in one corporation for corporate stock in another corporation formed to take over the assets and business of the first corporation, there being no change in officers or business or any change whatever except in the financial structure and a slight change in name ("company" to "corporation") on a basis of two and one-half shares of new stock for each share of old, received taxable income to the extent of the difference between the fair market value of the old stock at the incidence of the taxing act and the fair market value of the new stock when received, under a statute taxing "the excess of gains over the losses received by the

taxpayer from purchases or sales of intangible personal property. . . ."

(2) "Purchase" means "the acquisition of title to any commodity for cash or credit or for any other equivalent agreed upon."

(3) "Sale" means "the transfer of property from one person to another for a consideration of value without reference to the particular mode in which the consideration is paid."

Case No. 35

Peabody v. Eisner,

247 U. S. 347 (1918). Act of 1913.

(1) A stockholder receiving dividends in cash and in stock of another company is taxable upon the whole as income, whether or not the fund from which such payment came was in existence on March 1, 1913.

(2) A dividend paid in stock of another company is a property dividend and must be included in taxable income.

Case No. 36

Pfister v. Widule,

163 N. W. 641 (Wisc.) 1917. State Act of 1915.

(1) The Wisconsin courts will not inquire whether dividends paid are from earnings or capital. All dividends are presumed to be income in the hands of the recipient.

(2) Whether liquidating dividends, made on the cancellation of stock, should be so regarded is not decided.

Case No. 37

Rensselaer & S. R. Company v. Irwin,
239 Fed. 739 (D. C., N. D. N. Y.) 1917. Act of 1913.

(1) A corporation which before passage of the Act of 1909 transferred its property to another corporation, the latter agreeing to pay all operating expenses and in addition a fixed dividend on the first corporation's stock, directly to the holders of that stock, is taxable with respect to the amount so paid by the second corporation directly to the stockholders of the first.

(2) It is immaterial that it has no cash revenues from which to pay the tax.

(3) Where the plaintiff taxpayer stated in his pleading all of the facts relevant thereto, and alleged there was no income, the latter allegation is a conclusion of law, and is not admitted by demurrer.

Affirmed 249 Fed. 726.

Case No. 38

Rensselaer & S. R. Company v. Irwin,
249 Fed. 726 (C. C. A., 2d Circ.) 1918. Act of 1913.

(1) A corporation does not escape income tax where, maintaining its corporate existence, it has leased all of its property to another corporation which operates it and pays all expenses, and as consideration for the use thereof pays to the stockholders of the lessor corporation dividends at a fixed rate on their stock, since in law the dividends are the income of the lessor corporation which itself owes the duty to its stockholders of distributing profits.

(2) The court is not concerned with how the government is to collect, or the corporation to pay, the tax.

Dissenting opinion by Judge Hough on the ground that nothing was ever received by the taxpayer.

Affirming 239 Fed. 739.

Case No. 39

Rensselaer & Saratoga Railway Company v. Irwin,
252 Fed. 921 (D. C., N. D. N. Y.) 1918. Act of 1913.

Where a lessee railroad company has agreed to pay directly to the stockholders of the lessor company dividends on their stock by way of rent, and has stamped on their stock an agreement to this effect, a bill by the lessor corporation to declare an equitable lien against the moneys in the hands of the lessee held for the purpose of paying the dividends mentioned, the lessor having no other means by which to effect payment of income taxes will not lie unless all stockholders are parties, by publication or otherwise.

Case No. 40

Sargent Land Company v. Von Baumbach,
207 Fed. 423 (D. C., Minn.) 1913. Act of 1909.

(1) Where numerous owners of property combined their holdings for convenient management and transferred them to a corporation organized for the purpose in consideration of all of the capital stock thereof, in amount less than the value of the property, no taxable income arises to the corporation by reason of the transaction.

(2) Nor does the corporation receive "gross income" in the royalties paid to it by lessees under a mining lease, since the royalties in reality represent return of capital, and income is "something produced by capital without impairing that capital and which leaves the capital intact

and nothing can be called income which takes away from the capital itself."

Affirmed 219 Fed. 31; reversed 242 U. S. 503.

Case No. 41

Scott v. Schwab,

255 Fed. 57 (C. C. A., 9th Circ.) 1919. Act of 1909.

Where property is sold by a corporation at an advance over the original purchase price the amount of such advance is a gain or profit received during the year for the purpose of computing net income under the Act of 1909.

Case No. 42

Skinner v. Union Pacific Coal Company,

249 Fed. 152 (C. C. A., 8th Circ.) 1918. Act of 1913.

(1) Where all of the capital stock of one corporation is owned by another, the entire amount of dividends declared thereon is income to the stockholding corporation even though half of the profits out of which it was paid were earned before the effective date of the Act.

(2) There is no difference in meaning between "arising and accruing" as used in the Act of 1913, and "received."

(3) The true test whether a dividend is taxable is whether it represents a division of profits earned by the corporation, or a division of its capital.

Affirmed, 252 U. S. 570.

Case No. 43

Southern Pacific Company v. Lowe,

238 Fed. 847 (D. C., S. D. N. Y.) 1917. Act of 1913.

A corporation which owns all of the stock of another corporation, must include as income in the year of receipt

amounts received by way of dividends from the latter, unless the dividends were a capital distribution, and this is true regardless of the degree of control exercised and although all that comes in is not income.

Reversed 247 U. S. 330.

Case No. 44

Southern Pacific Railway Company v. Lowe,

247 U. S. 330 (1918). Act of 1913.

(1) When a corporation which owns all the stock of another, and leases the other's property, being entirely in control of all assets of that other, including cash on hand, causes a dividend to be declared after March 1, 1913, on the stock of the subsidiary corporation, such dividend is not taxable income to the parent corporation since the two corporations are one in substance and the parent has already received the use and benefit of the moneys comprising the dividend before the effective date of the Act; and this is true even though the books are separately and distinctly kept.

(2) That which a corporation owned on March 1, 1913, was capital and mere conversion from one form to another thereafter does not give rise to income, for all that comes in is not income.

Reversing 238 Fed. 847.

Case No. 44 A

State ex rel. Brenk v. Widule,

154 N. W. 696 (Wisc.) 1915. State Act of 1913.

That a devise of land may be taxed as income is assumed but not decided, because if so taxable a devise

received from sources without the State is not taxable to residents of Wisconsin, under the state statute.

Case No. 45

State ex rel. Bundy v. Nygaard,

158 N. W. 87 (Wisc.) 1916. State Act of 1913.

(1) That which was owned when the income tax law became effective was capital; therefore, where an investment made in 1907, had appreciated in value until 1911 (effective date of law) and not at all thereafter, no taxable income was realized by sale in 1914.

(2) "Income" is used in its "common ordinary meaning as the word is used in every day life," provided that it be money or something equivalent thereto.

Case No. 45 A

State ex rel. Hickox v. Widule,

163 N. W. 648 (Wisc.) 1917. State Act of 1915.

(1) Under the Wisconsin law, only those taxes paid on productive property may be deducted.

(2) Although an annuity the present value of which has been taxed to the beneficiary under a transfer tax law is not taxable to such beneficiary as income, the income from which such annuity is paid is taxable to the trustees making the payments.

Case No. 45 B

State ex rel. Howe v. Lee.

178 N. W. 471 (1920). State Act of 1911.

A stockholder in a corporation which sells out to another corporation must return as income the difference

between the value of the shares in the old company as of the incidence of the taxing act, which he gives up, and the cash plus the fair market value of the shares in the new company which he receives. The value of the stock disposed of is its actual and not its book value, and is determined by sales prices or other evidence; the value of the stock received is the value placed thereon by the parties if reasonable or failing that the market value thereof. In the absence of any evidence as to such value it will be deemed to be worth par.

Case No. 45 C

State ex rel. Kempsmith v. Widule,

154 N. W. 695 (Wisc.) 1915. State Act of 1913.

When a decedent has bequeathed a yearly payment to a beneficiary for life and such annuity is appraised at its present worth at the time of decedent's death and a transfer tax exacted from the beneficiary, the annuity payments are not taxable income to the beneficiary as and when paid.

Case No. 46

State ex rel. Sallie F. Moon Company v. Commission,

163 N. W. 639 (Wisc.) 1917. State Act of 1911.

(1) Dividends distributed after the passage of the income tax law are conclusively presumed to be income, and are taxable regardless that they come from surplus on hand when the law was passed.

(2) An income tax is a personal tax, not a property tax, although it is measured by the amount of property received as income. It is a tax on "the right or ability to produce, create, receive and enjoy."

Case No. 47

Stoffregan v. Moore,

264 Fed. 232 (D. C., E. D. Mo.) 1920. Act of 1913.

A stockholder is liable for income tax with respect to the amount of dividends declared on stock owned by him, even though such dividends comprise surplus earned over a period of fifteen years prior to the enactment of the law, except that the taxable dividends are to be reduced by "the sum in cash paid by plaintiff . . . for the interest in the company. . . ."

Case No. 48

Stone v. Tax Commissioner,

126 N. E. 373 (Mass.) 1920. State Act of 1916.

A taxpayer who exchanges shares of stock worth \$165 per share for four shares of stock in another corporation, and later exchanges the latter stock share for share for stock in still another corporation, worth at the time of exchange \$51 per share, the last corporation at the same time acquiring assets of three other and different corporations, thus conducting activities much greater in scope than those of the first two corporations, receives taxable income in an amount equal to the difference between one-fourth of \$165 and \$51, i. e., the cost of each share exchanged, as opposed to the fair market value of each share received, "even more plainly than in that case" (Osgood v. Tax Commissioner, 126 N. E. 371).

Case No. 49

Stratton's Independence v. Howbert,

231 U. S. 399 (1913). Act of 1909.

(1) Income is the gain derived from capital, from labor or from both combined, and includes gain from mining operations, even though such construction may involve some inequality of operation as between mining corporations, and other corporations, since every production of gain entails some wastage, such as earnings of the human hand and brain. "It was reasonable that Congress should fix upon gross income, without distinction as to source . . . and from this point of view, it makes little difference that the income may arise from a business that theoretically or practically involves a wasting of capital."

(2) A corporation mining ores from its own premises is not entitled to deduct from the proceeds of the ores mined, as depreciation, any amount representing the value of the ore in place which was removed from the ground.

Case No. 50

Towne v. Eisner,

242 Fed. 702 (D. C., S. D. N. Y.) 1917. Act of 1913.

(1) Stock dividends paid out of earnings accumulated prior to March 1, 1913, are taxable as income under the Act of 1913 in the year of receipt.

(2) Gains and profits from business can only be taxed by virtue of ownership of the property from which they are derived.

Reversed 245 U. S. 418.

Case No. 51**Towne v. Eisner,****245 U. S. 418 (1918). Act of 1913.**

The value of new shares of stock, issued as a stock dividend against earnings accumulated prior to March 1, 1913, is not taxable as income under the Act of 1913, since "a stock dividend really takes nothing from the property of the corporation and adds nothing to the interests of the shareholders."

Reversing 242 Fed. 702.

Case No. 52**Trefry v. Putnam,****116 N. E. 904 (Mass.) 1917. State Act of 1916.**

(1) Profits made through purchase and sale of intangible property are taxable under the Massachusetts Income Law, without violating the constitution, as such profits are income within the common understanding of the term ("the amount of actual wealth which comes to a person during a given period of time"), even though the person taxed is not a dealer in the property.

(2) The amount for which rights to subscribe to stock are sold is income.

(3) Stock dividends payable out of earnings before the tax law became effective are taxable as income in the year in which paid.

(4) Likewise as to cash dividends.

Case No. 53

Union Hollywood Water Company v. Carter,**238 Fed. 329 (C. C. A., 9th Circ.) 1917. Act of 1909.**

(1) Receipts of a corporation from contracts for service connections and pipe extensions must be included in gross income even though to fulfill the contracts the corporation is forced to invest practically all of such receipts in capital items, enhancing the value of its plant; and no deduction can be allowed for such expenditures because they are capital investments.

(2) A public service corporation is not *ipso facto* exempt.

(3) That such improvements may not, under state commission rulings, be included in valuation of plant when computing what is a fair return, is immaterial.

Case No. 54

United States v. Alpha Portland Cement Company,**242 Fed. 978 (D. C., E. D. Pa.) 1917. Act of 1909.**

The question, whether or not income resulted from transactions involving corporate reorganization, is a question of fact for a jury, and cannot be resolved on the equivalent of a demurrer.

Reversed 261 Fed. 339. See 257 Fed. 432.

Case No. 55

United States v. Alpha Portland Cement Company,**257 Fed. 432 (D. C., E. D. Penn.) 1919. Act of 1909.**

(1) The Court will not by awarding a new trial deprive the government of the advantage of a jury verdict that income resulted from a transfer of corporate property to a new corporation at a price paid in stock of the purchaser in

excess of the value of the property, even where the evidentiary facts are not disputed, and where the court would conclude differently than the jury.

(2) In the opinion of the court, no income results to a corporation selling its property to another corporation for stock of the latter greater in par value than the value of the property, when the two corporations later merge, since "income" as used in the taxing act means something "actually received and not . . . something which exists merely as a figment of the imagination."

Reversed (concluding that no income resulted) 261 Fed. 339.

Case No. 56

United States v. Christine Oil and Gas Company,
D. C., W. D. La., September 8, 1920. Act of 1913.

(1) The obligations of a solvent purchaser of property to pay therefor in the future, are not income received and no income tax can be assessed against the vendor with respect thereto, but the result would be different if the obligations given were notes of a third party, taken by the vendor in absolute payment for the property.

(2) The right of the Secretary of the Treasury to make reasonable rules and regulations does not vest in him authority to broaden the scope of the law, and to tax as income that which is not in truth income.

Case No. 57

United States v. Cleveland, etc., R. Company,
247 U. S. 195 (1918). Act of 1909.

A corporation which in 1900 purchased shares of another corporation's stock at one price and sold them at a greatly increased price in 1909 must include in gross in-

come so much of the profit as accrued after January 1, 1909, the effective date of the Act. This amount is to be determined by deducting from the sales price the inventory (or market) value on January 1, 1909, of the stock sold.

Affirming 242 Fed. 18.

Case No. 58

United States v. Frost,

Fed. Cas. 15172 (D. C., N. D. Ill.) 1869. Act of 1864.

Whether or not promissory notes, book accounts, etc., are gains, profits or income depends upon their value intrinsically or their convertibility into money, property or valuable assets. If they have only a nominal and not a real value or convertible equality and the taxpayer has realized nothing from them and therefore does not return them as a part of his income because he fairly and honestly believes that they are not real gains or profits he cannot be convicted of an untrue return.

Case No. 59

United States v. Guggenheim Exploration Company,

238 Fed. 231 (D. C., S. D. N. Y.) 1917. Act of 1909.

Mere bookkeeping entries can have no great weight in determining whether income was received. Thus, the sale of stock carried on the books at a value of \$1, for six million dollars, resulted in no income where it was shown by the resolution of the board of directors when purchasing the stock, and other evidence, that the stock sold was worth at the time of acquisition as much as the price for which it later was sold.

Case No. 60

United States v. Guinzburg,**D. C., S. D. N. Y., October 22, 1920. Act of 1913.**

A dividend declared in January, 1913, and payable in July, 1913, is not taxable as income, for the right of the stockholder from which the dividend flowed was completely vested and had become the stockholder's capital before the passage of the Act, and the payment represented a mere conversion of capital assets.

Case No. 61

United States v. Long,**D. C. Mont., January 16, 1920. Act of 1909.**

(1) Crops produced by a farmer, not sold, but fed to livestock are not to be included in income by which the tax is measured.

(2) Receipts from sales of wool on hand at the incidence of the act are not income, such sales being mere conversions of capital assets.

(3) Where the income upon which a taxpayer has computed his tax is in excess of his true net income, no additional taxes can be collected from him on the ground that an erroneous deduction has been made from gross income, where the effect of such error is more than offset by the inclusion in gross income of items not taxable.

Case No. 62

United States v. O. R. & N. Company,**251 Fed. 211 (C. C. A., 2d Circ.) 1918. Act of 1909.**

Where the sole stockholder of a corporation released without consideration a debt owing to him by the corpora-

tion, the result was an increase in the corporation's capital assets and not income to it.

Dissenting opinion by Judge Ward, on the ground that the term income comprehends "gifts," unless restricted, that this was a gift and income within the ordinary acceptance of the word, pointing out that the Acts of 1913, 1916 and 1917 "expressly provide that only the income from gifts is to be taxed from which it would be inferred, that but for this provision, the gifts themselves would have been taxed as income."

Case No. 63

United States v. Phil., B. & W. R. Company,

262 Fed. 188 (D. C., E. D. Penn.) 1920. Act of 1909.

(1) Stock dividends are not income within Act of 1909.

(2) The doctrine of *Southern Pac. Co. v. Lowe* is to be confined to the peculiar circumstances there found, and when one corporation holds stock in another, dividends thereon are income of the year in which received, unless the declaring company and the stockholding company are in reality the same.

(3) The income tax is a direct tax.

(4) An excise tax measured by income should regard only such income as results from the business carried on, as a result of the privilege for which the tax is levied. The courts cannot, however, disregard Congress' manifest intention otherwise to measure the tax.

Case No. 64

United States v. Schillinger,

Fed. Cas. 16228 (Circ. Ct., S. D. N. Y.) 1876. Act of 1870.

Under Section 6, Act of 1870, a promissory note not presently due is not taxable income for the year of its receipt. "In the absence of any special provision of law to the contrary, income must be taken to mean money and not the expectation of receiving it, or the right to receive it at a future time. In this case the defendant changed his patent rights for promissory notes payable in the future. Their value was uncertain, they might or might not be paid; but until they were paid, they were not income but only the ground of expecting income. The notes were no more taxable as income than would have been other patent rights if the defendant had received them in payment of those he sold. There are in the next section of the Statute (Section 7) provisions which confirm this construction. It makes interest received or accrued on all notes, bonds or mortgages or other forms of indebtedness bearing interest whether paid or not if good and collectible subject to the income tax. The purpose of this is evidently to prevent a man escaping the income tax by abstaining from taking that which is due him. On the same principle, had these notes been due and had the defendant allowed them to remain unpaid there might have been room to contend that their amount should be regarded as income but not being due when the income had become fixed for the year they were no part of the defendant's income."

Case No. 65

United States v. Silver King Consolidated Mining Co.,
D. C., Utah, October 16, 1919. Act of 1913.

The payment to defendant in 1913 of compensation for having wrongfully extracted ore from defendant's mine in 1908 was not taxable as income, for if such payment were income at all it was earned long before the taxing statutes were enacted, and as matter of fact the claim liquidated was a part of the capital assets of the company in 1908, and liquidation was no more than a conversion from one form of assets into another.

Case No. 66

United States v. Smith,
Fed. Cas. 16341 (D. C., Calif.) 1870. Civil War Acts.

(1) Under the Acts of 1861, 1862, 1864, 1865 and 1867, an exchange of one kind of property for another, such as stock for land, is not a "sale" which may result in income, as the transaction is not closed and completed until the thing received is converted into cash or its equivalent.

(2) But a transfer of stock for which the seller takes a promissory note is to be considered a sale for cash provided the note is good and collectible and an exchange of stocks for land followed by a sale of the land within the year for cash or good and collectible notes is to be considered as a sale of stocks for so much cash.

Case No. 67

United States Glue Company v. Oak Creek,

153 N. W. 241 (Wisc.). State Act of 1911.

(1) A statute imposing on incomes of persons engaged in business within and without the state as to income derived "from business transacted and property located within the State" reaches income derived from manufacture, sale and delivery of products manufactured, sold and delivered from a factory within the state to customers located within and without the state, and that derived from products manufactured in the state and shipped to branch houses out of the state, whence delivery made to customers on sales made either within or without the state. Sales of goods outside the state do not affect the source of income, which is the place the business is carried on.

(2) The statute does not reach income derived from purchases outside the state of goods shipped into the state and sold to customers outside the state.

(3) Taxation of income enumerated in (1) does not impose an unconstitutional burden on interstate commerce.

Affirmed 247 U. S. 321.

Case No. 68

Von Baumbach v. Sargent Land Company,

219 Fed. 31 (C. C. A., 8th Circ.) 1914. Act of 1909.

(1) A corporation which prior to January 1, 1909, had leased lands in Minnesota on a royalty basis thereby acquired valuable rights which must be capitalized as of that date; royalties received thereafter are income only to the extent they exceed the capital value destroyed by their payment, the leases being in effect sales of the ore in place.

(2) If the royalties were income, then the leases being depreciated by so much, the corporation is entitled to an allowance therefor as depreciation.

(3) "Income" does not arise from capital conversion into other forms of capital without gain or profit.

Affirming 207 Fed. 423; reversed 242 U. S. 503.

Case No. 69

Van Dyke v. Milwaukee,

146 N. W. 812 (Wisc.) 1914. State Act of 1913.

(1) Dividends are taxable income the year in which received, under a statute taxing all dividends as "income," because "income" is used in its common ordinary meaning; and it is immaterial from what source the dividends flow as they "will conclusively be presumed as against stockholders to be earnings or profits." But whether liquidation dividends are taxable is not decided.

(2) The fall in book value of stock due to the payment of dividends is not a deductible loss.

(3) Under a statute taxing as income "all interest derived from money loaned," a purchaser of bonds at a premium may not deduct each year by way of amortization the theoretical decrease in capital value due to approaching maturity as it was not contemplated by the law and it is not certain that the bondowner may not sell his bonds at a premium greater even than that which he paid.

On rehearing (150 N. W. 509) affirmed. Dissenting opinion filed by Justice Barnes, protesting against the construction given to "income" in declaring a conclusive presumption that all dividends from whatever source are income.

Case No. 70

Waring v. Savannah,

60 Ga. 93 (1878) City Act of 1875.

"Income" is not property within meaning of Georgia's constitution and a tax thereon is not therefore in violation of a constitutional provision that "taxes shall be *ad valorem* only and uniform on all species of property taxed," because it taxes income at one rate and real estate at another and different rate, since, "the fact is, property is a tree; income is the fruit; labor is a tree; income, the fruit; capital, the tree; income, the fruit. The fruit if not consumed as fast as it ripens, will germinate from the seed which it encloses, and will produce other trees, and grow into more property; but so long as it is fruit merely and plucked to eat, and consumed in the eating, it is no tree, and will produce itself no fruit."

Case No. 71

West End Street Ry. Company v. Malley,

246 Fed. 625 (C. C. A., 1st Circ.) 1917. Act of 1913.

A street railway company which has leased all of its property to an operating company in consideration of the latter's promise to pay a fixed dividend directly to the former company's shareholders, is subject to income tax with respect to the amounts so paid by the lessee to the lessor's stockholders.

Dissenting opinion on the ground that nothing was received by the taxpayer, and the result reached amounts to double taxation—once to the lessor corporation, and once to its stockholders.

Certiorari denied, 246 U. S. 671.

Case No. 72

Wilder v. Trefry,

125 N. E. 689 (Mass.) 1920. State Act of 1916.

Where a corporation compromised its obligation to pay dividends on its preferred stock with stockholders in whose favor unpaid dividends to the extent of $33\frac{1}{3}$ per cent. had accumulated by paying $7\frac{1}{2}$ per cent. cash, 14 per cent. in preferred stock and 12 per cent. in common stock, taxable income was received by them under a statute taxing as income "dividends on shares," since the payment was designated as a "dividend," and that was essentially its nature. "The word 'dividend' carries no spell with it, . . . as ordinarily used it is that portion of the profits which a corporation sets apart for its shareholders."

Case No. 73

Woods v. Lewellyn,

252 Fed. 106 (C. C. A., 3d Circ.) 1918. Act of 1913.

(1) Commissions paid an insurance agent after 1913 on policies secured by him before then are income in the ordinary sense of the word and are taxable, for even though there was a certain right on March 1, 1913, which was substituted by the payments of commissions, that right was only contingent upon payments of premiums by the policyholders which might never be made.

(2) Expenses incurred before March 1, 1913, in producing income received after that time cannot be deducted in the absence of provision therefor by Congress.

(3) "False" as used in paragraph E of the Act means "untrue" or "incorrect" as opposed to "fraudulent."

Case No. 74

Baldwin Locomotive Works v. McCoach,

215 Fed. 967 (D. C. E. D. Penn.) 1914. Act of 1909.

(1) Appraisal upward of property does not result in income.

(2) Sale of bonds at a discount by obligor does not result in deductible loss in year of sale, as loss if it occurs at all (which it does not if the bonds are never paid) occurs when the bonds are taken up.

Affirmed 221 Fed. 59.

Case No. 75

Baldwin Locomotive Works v. McCoach,

221 Fed. 59 (C. C. A., 3d Circ.) 1915. Act of 1909.

(1) A corporation which sells its promises to pay (in the form of mortgage bonds) \$10,000,000 thirty years hence for \$9,500,000 realizes no deductible loss in the year of sale. "In effect the transaction transmuted a part of the corporation's assets from credit or property into liquid cash, but it added nothing to its income. If the cost of thus changing the form of its assets is an expense of the business, it has not yet been paid, and will not be paid until 1940."

(2) Appraisal upward of corporate property is not income.

Affirming 215 Fed. 967.

Case No. 76

Chicago & Alton Ry. Company v. United States,

53 Ct. Cls. 41 (1917). Act of 1909.

When a railroad corporation issued bonds and notes at a discount in 1906, and charged off as a loss in that year the

total amount of the discount, making its returns in 1911 and 1912 without claiming a proportionate part of the discount which it in this action claims is apportionable to that year, a suit against the United States will not avail to recover the saving in tax which might have resulted in 1911 and 1912, had the books been kept in such manner as to charge the income of those years with an aliquot portion of the total discount, relying on *Maryland Casualty Co. v. United States*, 52 Ct. Cls. '201.

Case No. 77

Cryan v. Wardell,

263 Fed. 248 (D. C., N. D. Cal.) 1920. Act of 1916.

Where a lessee, pursuant to the terms of a lease of land for twenty-six years, made in 1908, erected a building on the land leased, completing it in 1910, forfeited the lease in 1916, the lessor then reëntering the premises, the value of the building erected under the lease is not income to the lessor for 1916, since "whatever accession of value resulted to plaintiff's property from the erection of the building in question accrued and became vested in her in 1910," before the incidence of the Act.

Case No. 78

Doyle v. Mitchell Brothers,

235 Fed. 686 (C. C. A., 6th Circ.) 1916. Act of 1909.

(1) Only the difference between the value of property sold, as of the incidence of the taxing act, and the sale price, is income, and this is as true of standing timber as of other capital assets. Therefore, there is no tax liability where appreciation, realized by sale after January 1, 1909, all occurred before that time.

(2) "Income received need not be in cash. If in the regular course of business, property has been sold and is represented by a bill or account receivable it is no undue stretch of imagination to say that these proceeds are income received."

Affirming 225 Fed. 437; petition for rehearing denied 239 Fed. 719; affirmed 247 U. S. 179.

Case No. 79

Doyle v. Mitchell Brothers Company,

247 U. S. 179 (1917). Act of 1909.

A corporation owning its own timber lands, and engaged in the business of cutting and manufacturing stumpage into finished product, may deduct for the purpose of computing net income on which the excise tax imposed by the Act of 1909 is based, the value as of January 1, 1909, of all stumpage cut during the year, since property owned at that time then became capital for the purpose of the act, and realization after the effective date of the act of appreciation occurring before that date, was not taxable thereunder.

Affirming 235 Fed. 686, and 225 Fed. 427.

Case No. 80

Gauley Mountain Coal Company v. Hays,

230 Fed. 110 (C. C. A., 4th Circ.) 1915. Act of 1909.

A corporation which purchased in 1902 shares of stock in another corporation and sold them at a greatly increased price in 1911 is not liable for excise tax with respect to so much of the profit as accrued after January 1, 1909, since the tax imposed is intended to take into account only profits accruing during the year of assessment, and not

those resulting from many years of accretion, relying on *Gray v. Darlington* (q. v.).

Reversed 247 U. S. 189.

Case No. 81

Hays v. Gauley Mountain Coal Company,

247 U. S. 189 (1918). Act of 1909.

A corporation which purchased in 1902 shares of stock for \$800,000 which it sold in 1911 for \$1,010,000, is liable to tax under the Act of 1909 with respect to so much of the gain as is attributable to the period between January 1, 1909, and the sale, and a deduction may not be made from the profit of the amount the investment would have earned had it been placed at interest. In the absence of a better means of measurement, it is permissible to prorate the entire profit allocating as taxable the same proportion as the number of days elapsing after January 1, 1909, bears to the total time the stock was held.

Reversing 230 Fed. 110.

Case No. 82

Jackson v. Smietanka,

267 Fed. 932 (D. C., N. D. Ill.) 1920. Act of 1918.

A taxpayer who keeps no books of account, and to whom is paid, upon the termination of services extending over a period of years a lump sum in amount not previously agreed upon, as compensation for such services, must return as income in the year in which received, the entire amount so paid him, even when such payment is followed by a statement apportioning the compensation over the years in which the services were rendered.

Case No. 83

Lynch v. Hornby,**236 Fed. 661 (C. C. A., 8th Circ.) 1916. Act of 1913.**

Dividends received by a stockholder in 1914 as a result of the conversion into money of property owned by the corporation on March 1, 1913, and which on that date was worth the amount subsequently realized, are not income accruing after March 1, 1913, to the stockholder and are not taxable as such. The original cost of the property is immaterial.

Reversed 247 U. S. 339.

Case No. 84

Lynch v. Turrish,**236 Fed. 653 (C. C. A., 8th Circ.) 1916. Act of 1913.**

The surrender by a stockholder of his stock, in 1914, for cash in amount not exceeding the fair market value of the stock as of March 1, 1913, works no taxable gain to him, since such gain as he realized accrued prior to March 1, 1913, and the (liquidating) dividend cannot be said to be "income, gains, profits" of the year 1914.

Affirmed 247 U. S. 221.

Case No. 85

Lynch v. Turrish,**247 U. S. 221 (1918). Act of 1913.**

A stockholder in a corporation formed in 1903 to buy and sell timber lands, whose stock had increased greatly in value prior to March 1, 1913, but not at all thereafter when it was surrendered (in 1914) as the result of a liquidating dividend, is not liable for income tax on the increase

realized by the surrender, because the gain is taxable at all occurred before the incidence of the Act.

Affirming 236 Fed. 653.

Case No. 86

Magee v. Denton,

Fed. Cas. 8943 (C. C., N. D. N. Y.) 1863. Act of 1862.

(1) When a dividend has been declared by a corporation, and become payable, the mere omission of the stockholder to obtain or receive the dividend subject to his call would not excuse him from embracing the amount of such dividend in his statement of his taxable income for the year.

(2) A court of equity cannot give relief against the assessment of a tax claimed to be illegal where there exists a complete remedy at law.

Case No. 87

Mitchell Brothers v. Doyle,

225 Fed. 437 (D. C., W. D. Mich.) 1915. Act of 1909.

A corporation which purchased timber lands in 1903 and which in computing income for the purposes of the Act of 1909 deducted from the sales price the 1909 value of the timber, rather than the 1903 value, correctly determined its income, since the appreciation occurring between 1903 and 1909 was nontaxable even though it was realized after the effective date of the law. There is no substantial difference between the proceeds received from the conversion of timber into a finished article and those from the conversion of wheat, cotton or iron, although *semble* a different rule might apply to minerals.

Affirmed 235 Fed. 686, and 247 U. S. 179.

Case No. 87 A

United States v. C., C., C. & St. L. Ry. Company,
D. C., S. D. Ohio, February 23, 1916. Act of 1909.

Where an employee of a taxpayer has embezzled his employer's money for a period of years, which fact is discovered later, the amount of the loss is not deductible in the year discovered, as the losses were sustained at the time the embezzlement occurred.

Case No. 88

Bayfield Co. v. Pishon,
156 N. W. 463 (Wisc.) 1916. State Act of 1911.

A statute which imposes an income tax on the income of nonresidents as to such income as is "derived from sources within the state or within its jurisdiction" does not reach income on stocks, bonds and other securities held in trust outside the state by a citizen of another state and paid to nonresidents even where the trust was created by the will of a resident, probated within the state, and the trustee was appointed by, and derived all of his powers and authority from the court of the state imposing the tax.

Case No. 89

DeGanay v. Lederer,
239 Fed. 568 (D. C., E. D. Pa.) 1917. Act of 1913.

(1) An act imposing a tax on "the entire net income from all property owned . . . in the United States by persons residing elsewhere" applies to the income from corporate stocks and bonds physically within this country, as the present day conception of property which Congress

is presumed to have used includes intangibles such as those enumerated, even though the owner is nonresident as to the United States.

(2) Great weight will be given to construction of statutes by departments charged with the execution of them.

(3) Revenue statutes are to be construed so as to promote their real purpose.

(4) The principle of a strict construction in favor of the taxpayer has been repudiated at least within the federal jurisdiction.

Affirmed 250 U. S. 376.

Case No. 90

DeGanay v. Lederer,

250 U. S. 376 (1919). Act of 1913.

The income from bonds secured by property within the United States and from corporate stock of corporations domiciled therein is income from property within the United States when such bonds and stock are actually held within the United States, even when the owner of such bonds and stocks is a noncitizen residing outside the United States, for the maxim that personal property is situated at the domicile of the owner is a fiction at best and must yield to facts and circumstances of cases which require it.

Case No. 91

H. P. Hood & Sons v. Commonwealth,

127 N. E. 497 (Mass.) 1920. State Act of 1918.

Income derived from the purchase of raw milk outside the state, transportation to within the state, pasteurization, bottling and delivery there, is income from sources within the state and not from interstate commerce, be-

cause "the net income is derived wholly, so far as measured in cash receipts from these retail or wholesale sales from stock, which previously has become part of the common stock of merchandise within the commonwealth," and interstate commerce was only utilized as a preliminary step to the production of the income.

Case No. 92

Maguire v. Trefry,

253 U. S. 12 (1920) Mass. State Act of 1916.

A state may levy an income tax on the income received by a resident from property held in trust in another jurisdiction and administered under the laws there, for the recipient has an equitable interest which abides with him at his domicile and is there taxable.

Affirming 120 N. E. 162.

Case No. 93

28 Opinion Attorney General, 211,

Rendered by George W. Wickersham, March 9, 1920. Act of 1909.

(1) Foreign corporations engaged in transporting goods on the high seas to and from the United States, maintaining docks and other facilities in the United States are doing business therein and receive income from sources within the United States.

(2) The tax is not invalid as being on exports, even though it is measured by income received in part from exports.

Case No. 94**30 Opinion Attorney General, 230 and 273,**

Rendered by J. C. McReynolds, October 23, 1913. Act of 1913.

(1) An act taxing income from property within the United States owned by persons residing elsewhere does not tax income from bonds owned by a nonresident alien, irrespective of where the bonds themselves are in fact kept and where interest payments are made.

(2) This is true likewise as to income from shares of stock of companies organized in the United States, owned by aliens residing without the United States.

Affirmed 30 Opinion Attorney General, 435.

Case No. 95**Opinion Attorney General, T. D. 3111,**

Rendered by A. Mitchell Palmer, 1920. Act of 1918.

(1) There is no income from sources within the United States from goods manufactured there unless there is, in the language of section 233 (b), both "manufacture and disposition of goods within the United States." The Act taxes only income that accrues within the United States.

(2) The mere buying of goods within the United States, with capital furnished from abroad, to be sold abroad, is not a trade or business exercised in the United States so as to subject the purchaser of the goods to income tax. A merchant exercises his trade where he has his principal place of business, viz., where his profits come home to him.

(3) If income be taxed, the recipient thereof must have a domicile within the jurisdiction imposing the tax, or the property or business out of which the income issues must

be situate within such jurisdiction so that the income may be said to have a situs therein.

(4) Where a corporation purchases goods abroad and sells them within the United States, the profits accruing from such transactions are profits derived from business carried on within the United States and the gross income from such business is income from sources within the United States.

(5) In the case of a partnership organized abroad one of whose members is a resident citizen of the United States and whose business consists in selling abroad goods consigned to it from various parts of the world including the United States, upon commission, title to the goods never vesting in the firm but passing directly from the consignors to the purchasers, the business of the United States member consisting of soliciting consignments of goods, disbursing proceeds of sales made abroad in payment to consignors in the United States, attending to the shipment of goods, and making advances to consignors on security of bills of lading and express receipts, the funds for the use of the branch office in the United States being obtained by selling drafts on a foreign city, only the income of the partner resident within the United States is income from sources within the United States and subject to income tax.

(6) A foreign corporation, having its home office abroad, which operates a line of steamships between the United States and foreign ports, consigns its steamships to an American firm, which handles them as agents and brokers, seeing to the entry and clearance of each steamer, the discharge and loading of cargo and supplies, collecting such part of the freight as is prepayable in this country, deducting the amount of its disbursements and charges and remitting the balance to the foreign corporation,

derives income from sources within the United States to the extent that it derives income from traffic originating within the United States.

Case No. 96

People of New York ex rel. Alpha Portland Cement Co. v. Knapp,

64 N. Y. L. J. 1043 (1920). State Acts of 1917 and 1918.

(1) The New York Corporation Tax Acts although stated to impose excise taxes are in truth income tax acts, and the state is without power unreasonably to allocate for the purposes of the act income from within and without the state.

(2) Thus an allocation based on location within and without the state of corporate assets, which disregards intangible property, although the income therefrom is taxed, is invalid, as is also a similar method of allocation which arbitrarily disregards corporate stock owned in an amount greater than 10 per cent. of other assets.

Case No. 97

State ex rel. Manitowoc Gas Company v. Tax Commission,

152 N. W. 848 (Wisc.) 1915. State Act of 1911.

Income from bonds, secured by a lien on property within the state, held by nonresidents, is not "such income as is derived from sources within the state or within its jurisdiction," and is not taxable as income to the bondholders, since the state is without jurisdiction. The property is the bonds, and the situs thereof is the domicile of the creditor.

Case No. 98

State ex rel. Mariner v. Hampel,
178 N. W. 244 (Wisc.) 1920. State Act of 1919.

Resident beneficiaries of a resident trust are not liable for tax on income received from trustees of property located without the state (which income is, therefore, exempt from taxation in the hands of such trustees) merely because the trustees pay administrative charges, expenses, *et cetera*, and distributed the remainder of the income to the beneficiaries within the state, since such activities do not amount to carrying on business within the state of Wisconsin and the beneficiaries are not therefore the recipients of income from a business conducted within the state.

Case No. 99

Underwood Typewriter Company v. Chamberlain,
108 Atl. 154 (Conn.) 1919. State Act of 1915.

(1) An excise tax levied on all corporations measured by net income as computed under the federal act is not invalid as a tax on interstate commerce, though the corporation may have income from such sources.

(2) Allocation based on a proportion determined by the ratio of tangible property within the state to all tangible property owned is reasonable, since the tax levied is no greater than the amount which might have been levied directly on the property within the state.

(3) The use of the federal computation is not invalid as a delegation of legislative authority.

Dissenting opinion.

Case No. 100

Village of Westby v. Bekkedal,

178 N. W. 451 (Wisc.) 1920. State Act of 1919.

Income derived from purchases in Wisconsin and sales in New York is, as to persons residing in Wisconsin making the purchases there and shipping the goods to New York, income entirely "derived from property located or business transacted within the state" and not from interstate commerce, and is taxable; as to the New York partners only so much of the income as is derived from sources in Wisconsin is taxable.

Case No. 101

Arpin v. Eberhardt,

147 N. W. 1016 (Wisc.) 1914. State Act of 1911.

(1) A statute imposing a tax on income "received by every person residing within the state, and by every non-resident of the state upon such income as is derived from sources within the state or within its jurisdiction (and upon) so much of the income of any person residing within the state as is derived from rentals, stocks, bonds . . . whether such income is derived from sources within or without the state" does not reach income received by a resident from profits earned by a partnership doing business without the state, since such a construction would render ineffective the provision relating to income from stocks and bonds.

(2) An action brought by a taxpayer to test the constitutionality of a taxing statute may be cited as authority only for such considerations as go to the act as a whole, and language used as to the meaning of individual points

is not controlling, referring to language used in 134 N. W. 673.

Case No. 102

Commercial Trav. Life & A. Association v. Rodway,
235 Fed. 370 (D. C., N. D. Ohio) 1913. Act of 1909.

(1) Where a corporation is organized under a state statute regulating mutual protective associations, and operates as such, it cannot claim tax exemption as a "fraternal beneficiary society," there being a separate provision of the state laws regulating such organizations. Fraternal beneficiary societies discussed.

(2) The absence of profit is not the criterion by which to judge whether the corporation is exempt; it is the presence or absence of a fraternal side and object.

(3) The words "operating under the lodge system" apply to each of the several classifications in the expression "fraternal beneficiary societies, orders or associations operating under the lodge system."

Case No. 103

Equitable Trust Company v. Western Pacific Railway Co.,
236 Fed. 813 (D. C., N. D. Calif.) 1916. Act of 1913.

On the authority of *Penn Steel Company v. New York City R. Company*, 198 Fed. 775, held, that a fund in the hands of receivers, through whom the court took possession of corporate property, representing the net proceeds from the operation of a railroad while in their hands, over and above the expenses and authorized expenditures, is not subject to income tax under the Act of 1913.

Case No. 104

First Trust and Savings Bank v. Smietanka,

(C. C. A., 7th Circ.) October, 1920. Act of 1913.

(1) The Act of 1913 taxes only the income of persons, including individuals and corporations. It did not therefore reach income accruing to property held in trust for distribution in the future to unascertained persons.

(2) This construction is confirmed by the fact that legislation to accomplish such taxation was passed in 1916.

Case No. 105

Herold v. Parkview Building and Loan Association,

210 Fed. 577 (C. C. A., 3d Circ.) 1914. Act of 1909.

(1) The phrase "no part of the net earnings of which," etc., found in section 38 applies only to religious, charitable or educational associations.

(2) A building and loan association is operated for the mutual benefit of its members, even though it issues paid-up stock, the purchaser thereof being guaranteed a fixed rate of interest payable out of profits, since "mutual" means "substantially equal," and the benefit to the stockholder from his guarantee is offset by the benefit to the association from the fact that the stock is entirely paid up, giving to it working capital.

Affirming 203 Fed. 876.

Case No. 106

In re Heller, Hirsch Company,

258 Fed. 208 (C. C. A., 2d Circ.) 1919. Act of 1916.

A trustee for a corporation in bankruptcy who compromises a claim against a debtor, amounting to \$396,-

973.44, for \$119,275, is not required to report as taxable income of the corporation the amount so gained, since he was not "operating the property or business" of the corporation when he so acted, and Congress intended only to tax those trustees who actually continued defunct corporations' businesses—not those who merely liquidate and distribute the assets.

Case No. 107

Lathers v. Hamlin,

170 N. Y. S. 98 (1918). Act of 1913.

A receiver of rents and profits, appointed by a court, who may therefore act only as the court instructs him, is under no obligation to pay income tax with respect to rents and profits received, since they are not the avails of investments, trade, commerce, employment, occupation or service, and are in no sense "income" so far as the receiver is concerned.

Case No. 108

Lederer v. Stockton,

266 Fed. 676 (C. C. A., 3d Circ.) 1920. Acts of 1913 and 1916.

No income tax is collectible from income accruing to a trust fund in the hands of a trustee charged with the duty of paying from the income of \$15,000 an annuity of \$500 and accumulating the balance for payment to a corporation exempt from tax upon the death of the annuitant, where as a matter of fact the exempt corporation has use and possession of the trust fund as result of a loan from the trustee, and itself advances the money with which to pay the annuitant, for the trustee in this case is the mere agent of the exempt beneficiary, and no tax can therefore attach with respect to the income accumulating,

the trustee and the exempt beneficiary being substantially one.

Affirming 262 Fed. 173.

Case No. 109

Oahu R. & L. Company v. Pratt,

14 Haw. 126 (1902). Hawaiian Act of 1901.

(1) Inasmuch as a tax on income is in substance a tax on the property from which it is derived, income which springs from property itself tax exempt, is likewise exempt.

(2) An exemption by the legislature of property "fairly necessary to the reasonable construction," etc., of a railroad does not exempt a state-paid subsidy from taxation as income when received by a completed railroad conducting operations at a profit and the amount of such subsidy is taxable as income.

Case No. 110

28 Opinion Attorney General, 138,

Rendered by George W. Wickersham, July 13, 1910. Act of 1909.

Since the Act of 1909 provides that the tax therein imposed shall be measured by income from all sources except that certain specified deductions named may be subtracted, and since there is no language of the Act which would exempt from the tax interest received on United States bonds, such interest must be included in gross income, and may not be deducted from gross income when determining net income by which the tax is measured.

Case No. 111

31 Opinion Attorney General, 125,

Rendered by T. W. Gregory, June 8, 1917. Act of 1916.

(1) Corporate stockholders receiving dividends paid with nontaxable liberty bonds must include in the computation of net income subject to income tax the value of such bonds received as dividend payments, because the tax is not upon any part of the income but upon it as a whole and "cannot be evaded because the income or gain happens to be liquidated by the delivery of a certain number of . . . nontaxable securities."

(2) A corporation owning nontaxable bonds is not exempt from excise taxes, franchise taxes and other corporation taxes such for instance as the capital stock tax, to the extent of such ownership.

Case No. 112

31 Opinion Attorney General, 176,

Rendered by T. W. Gregory, November 3, 1917. Act of 1916.

Credit unions organized under the laws of Massachusetts, being in substance and in fact the same as "coöperative banks . . . organized and operated for mutual purposes and without profit," come within the provisions of the fourth paragraph of Section II, and are exempt from taxation.

Case No. 113

31 Opinion Attorney General, 403,

Rendered by A. Mitchell Palmer, March 26, 1919. Act of 1916.

An association known as "Houlton Grange" composed of persons engaged in agriculture, which acts as the agent

of its members for the purchase of goods for resale to them, is not exempt from income tax, because it does not operate under the lodge system or provide for benefits to its members and because it does not operate as sales agent for the purpose of marketing the products of its members.

Case No. 114

Pacific Building and Loan Association v. Hartson,

201 Fed. 1011 (D. C., W. D. Wash.) 1913. Act of 1909.

A building and loan association which loans to nonmembers, issued preferred or guaranteed interest paying stock, and authorizes the directors upon finding that the income of the association cannot be loaned profitably to "cancel any outstanding certificates of stock not borrowed upon," thereby authorizing the retirement of all stock in their discretion is not "organized . . . for the mutual benefit of the members."

Case No. 115

Parkview Building and Loan Association v. Herold,

203 Fed. 876 (D. C., N. Y.) 1913. Act of 1909.

(1) A building and loan association is "organized and operated exclusively for the mutual benefit" of its members where each member is entitled to one and only one vote irrespective of stock ownership, and where there is mutuality with respect to the distribution of assets upon dissolution even though the holders of one class of shares pay the full amount at one time and the company guarantees them a certain per cent. return with no like guaranty to other stockholders since "mutual" cannot always be considered to be a synonym of "equal," and here the

advantage of a fixed rate of return is offset by the payment for the shares in full.

(2) Doubt must be resolved in favor of the taxpayer.

Affirmed 210 Fed. 577.

Case No. 116

Pennsylvania Steel Company v. New York City Ry. Co.,
176 Fed. 471 (D. C., S. D. N. Y.) 1910. Act of 1909.

The Act of 1909 was not meant to reach insolvent corporations with no net income, whose properties are administered by a court.

Affirmed 231 U. S. 144.

Case No. 117

Pennsylvania Steel Company v. New York City Ry. Co.;
Central Trust Company v. Third Avenue Ry. Co.,
193 Fed. 286 (D. C., S. D. N. Y.) 1912. Act of 1909.

It was not the intention of Congress to assert the excise tax of 1909 against corporations whose assets were given into the hands of receivers, acting under court authority, for the purpose of marshalling and distributing them to creditors.

Affirmed 198 Fed. 774 and 231 U. S. 144.

Case No. 118,

Pennsylvania Steel Company v. New York City Ry. Co.;
Central Trust Company v. Third Avenue Ry. Co.,
198 Fed. 774 (C. C. A., 2d Circ.) 1912. Act of 1909.

Returns of net income, or payment of tax measured thereby, are not required from receivers of insolvent

corporations carrying on the business of the corporations, for the following reasons: First, the act does not mention receivers or make them liable to comply with the terms of the act on behalf of the corporation the property of which is in their possession; second, the tax is not meant to reach businesses carried on other than by corporations; third, the tax applies only to corporations which themselves carry on business; fourth, a corporation the functions of which are carried on by a receiver is not doing business.

Affirming 193 Fed. 286; affirmed 231 U. S. 144.

Case No. 119

Scott v. Western Pacific Company,

246 Fed. 545 (C. C. A., 9th Circ.) 1917. Act of 1913.

(1) Receivers being court officers it is proper for them to request instructions whether to pay taxes.

(2) The omission of specific words imposing a tax on receivers of corporations with respect to the income of the corporation for which they act must be taken to exempt them from taxation entirely.

(3) This construction is confirmed by the specific provision made in the Act of 1916 for such taxation.

Affirming 236 Fed. 813.

Case No. 120

State ex rel. Columbia Construction Company v. Tax Commission,

185 N. W. 382 (Wisc.) 1917. State Act of 1915.

(1) Where a statute excepts from income taxation dividends received from stocks in any corporation the income of which has already been "assessed," dividends

from a corporation which was listed and exempted from taxation are taxable.

(2) Where C receives dividends on stock held in corporation B, which was exempted from taxation because all of its income was from dividends on stock held in corporation A, which was itself subject to tax, no exemption attaches to the dividends received by C under a statutory exemption excepting from tax "dividends received from stocks in any corporation the income of which has already been assessed."

Case No. 121

State ex rel. Moon v. Nygaard,

175 N. W. 810 (Wisc.) 1920. State Act of 1917.

When a statute provides that a dividend means a distribution out of earnings, a distribution by A company to B company, a stockholder holding company, which in turn is distributed to C, an individual owning stock in B company, is not taxable to C, if the distribution made by A company was out of capital.

Case No. 122

Stockton v. Lederer,

262 Fed. 173 (D. C., E. D. Penn.) 1919. Acts of 1913, 1916 and 1917.

Income of an estate devised to executors on trust to pay certain annuities until death of beneficiaries and the remainder to a named charity is not taxable in the hands of the trustees under the Acts of 1913, 1916 and 1917, if the sum paid to each beneficiary is less than the allowable credit, because the income to the estate is really income to those having the beneficial interest therein, none of whom are taxable (the annuitants because the amounts are too small; the charity because specifically exempted) and the

trustees are only the reservoir and conduit through which the income reaches the beneficiaries.

Affirmed 266 Fed. 676.

Case No. 123

United States v. General Insp. and Loading Company,
192 Fed. 223 (D. C., N. J.) 1911. Act of 1909.

A corporation which did business during 1909 is liable for payment of the Corporate Excise Tax, notwithstanding that it has before the due date of the return secured a certificate of dissolution.

Case No. 124

United States v. Whitridge;
United States v. Joline and Robertson,
231 U. S. 144 (1913). Act of 1909.

The corporation excise tax, not specifically dealing with corporations whose businesses and properties are in the hands of a receiver acting as a court officer, does not apply to such corporations.

Affirming 176 Fed. 471, 193 Fed. 286 and 198 Fed. 774.

Case No. 125

Wilcox v. Middlesex Commissioners,
103 Mass. 544 (1870). State Act.

An income tax statute which exempts from tax income received from property itself taxed, does not exempt a merchant's income derived from his occupation as such, even where his stock in trade has been assessed on assessment day, for his income is not necessarily from his stock

in trade, but is the result of many combined influences: the use of capital invested, personal labor and services, skill with which stock is laid in from time to time, or is renewed, carefulness and good judgment as to credit and the foresight and address with which preparation for contingencies is made. In short, it is the creation of capital industry and skill, and does not flow solely from his stock in trade.

Case No. 126

Wilder v. Hawaiian Trust Company, Trustee,

20 Haw. 589 (1911). Hawaiian Act of 1905.

(1) An income tax statute taxing "income over and above fifteen hundred dollars, derived by every person residing either within or without the Territory from all property owned and every business, trade, profession, employment or vocation carried on in the Territory," does not operate to require a return and tax from a corporation acting in a fiduciary capacity with reference to income received by it on trust for living persons and paid over to them, after deducting expenses, each year, since such income is "derived" by the beneficiaries who actually receive it and it is taxable to them.

(2) The excess of such income received over the amount necessary to meet expenses and to pay annuities, which is under the terms of the trust accumulated for the benefit of unknown persons is not taxable, since it is not "derived" by any person, that term referring to the receipt of income beneficially for the recipient's own use.

Case No. 127

Black v. Bolen,**268 Fed. 427 (D. C., W. D. Okla.) 1920. Act of 1913.**

(1) If a claim for abatement of additional taxes has been rejected by the Commissioner, it is not a necessary condition precedent to suit by the taxpayer that he file claim for refund thereof after payment, particularly where he has been advised by the Commissioner that "it is unnecessary that a refund claim be filed before suit is instituted."

(2) A taxpayer engaged generally in the oil business, buying, selling and developing oil leases, and who during the taxable year bought and sold stocks on the New York curb in amount of \$100,000, may deduct from gross income as a loss incurred in business the amount of moneys representing profits from stock speculation embezzled by his broker, for a man may have more than one trade or business, and since the taxpayer did not profit by reason of his speculation, the government should not do so at his expense.

Case No. 128

Bryce v. Keith,**257 Fed. 133 (D. C., E. D. N. Y.) 1919. Act of 1913.**

Loss of the entire value of corporate stock acquired by numerous transfers of property to a corporation, the transactions being complicated in character and involving large sums of money, from which it reasonably can be assumed they required much time and attention, is a loss "incurred in trade," and is therefore deductible from gross income when computing net income subject to tax.

Case No. 129

Grand Rapids & I. Ry. v. Doyle,

245 Fed. 792 (D. C., W. D. Mich.) 1915. Act of 1909.

(1) A railroad corporation which replaces old rails and equipment with new and better rails and equipment may deduct from gross income the replacement value of the equipment changed, but capital additions may not be deducted. Operating expenses of a railroad means the payment for labor and materials which go into the actual operating of the property. "Maintenance" means the upkeep or preserving of the condition of the property, and excludes additions.

(2) A treasury decision is entitled to some consideration, but not to great weight.

Affirmed 256 Fed. 989.

Case No. 130

Grant v. Hartford and New Haven Railway Company,

93 U. S. 225 (1876). Act of 1864.

An act imposing an income tax on all profits, including those used in construction, does not reach the entire amount of an investment in a new bridge built to replace an old one, but only so much of such investment as exceeds the value of the old bridge replaced when it was in good repair.

Affirming Fed. Cas. 6159.

Case No. 131

Gulf and Interstate Ry. Company v. Walker,

D. C., W. D. Tex., May 13, 1920. Act of 1909.

(1) Unpaid overdue interest is not to be included in income.

(2) An advance by a parent corporation to a subsidiary to meet losses incurred by the latter is deductible from gross income in determining net income, when the facts show that the facilities provided the parent company by the subsidiary company are so vital to the former's business that its maintenance is a legitimate and necessary item of expense of the parent company.

Case No. 132

Hartford and New Haven Ry. Company v. Grant,

Fed. Cas. 6159 (C. C. Conn.) 1872. Act of 1864.

(1) Whatever sum is necessary to replace an old and worn out bridge by a new one of the same materials and dimensions can in no sense be deemed to be an investment of *profits*.

(2) The excess of the entire amount expended over the cost of replacing the structure removed with another of like kind and dimension is an investment of profits.

(3) But if no allowance has been made for depreciation, and other expenses, and if such an allowance is properly no greater than the entire expense of the bridge, then the excess cost of the new bridge over the replacement cost of the old may be offset against such allowance.

Affirmed 93 U. S. 225.

Case No. 133

In re Hawaiian Com. and Sugar Company,

14 Haw. 687 (1903) Hawaiian Act of 1901.

A corporation which builds a new and larger plant on a different site and abandons the old plant may not when computing net income deduct as an expense "actually incurred in carrying on business" the value of the old plant abandoned, for a provision in the Act that "no deduction shall be made for new buildings, permanent improvements or betterments made to increase the value of any property or estate" does not necessarily mean that every such expenditure which does not increase the value of property may be deducted. A deduction, up to the value of the old plant, might be allowed as an expense if it were necessary to replace or rebuild the old plant, but here the old plant remained in as good condition as before, although unused.

Case No. 134

In re Hazard's Estate,

177 N. Y. S. 369 (1919). Act of 1917.

The federal income tax imposed upon income of a decedent received between the first of the year and the date of his death is not so fixed at the time of his death as to be an allowable deduction when computing net estate subject to New York Transfer Tax, since it might at any time within five years be recomputed and reassessed by the Commissioner.

Case No. 135

In re Income Tax Appeal Cases,

18 Haw. 596 (1908). Act of 1905.

(1) Where a statute specifically forbids a deduction from gross income of amounts expended for new buildings, amounts so expended may not be deducted even where it is shown that the new buildings do not better the property but are made necessary by the introduction of European labor to replace Asiatic.

(2) The cost of new machinery acquired to replace old machinery may be deducted where the latter is so worn as to become inefficient, even though the taxpayer retains it for possible use in emergencies.

(3) So much of the cost of a new bridge built of concrete and steel to replace one of wood which is equivalent to the value of the old bridge, may be deducted, but the excess represents an investment of capital.

(4) Where a sugar cane plantation was forced to substitute new varieties of cane to replace old varieties on account of the deterioration of the latter, and the substitution required new machinery to handle the new varieties, the output not being increased and the plantation remaining at the same state of efficiency, the value of the new machinery may not be deducted except so far as it actually replaced the old, when the replacement value of that discarded may be deducted.

(5) An amount expended in 1906 for clearing property from which according to ordinary experience a crop would be harvested in 1908 is an amount expended in the production of movable property to be sold and may under the statute be deducted when so sold, but not otherwise as a current expense.

Case No. 136

In re Laupahoehoe Sugar Company, et al.,

18 Haw. 206 (1906). Hawaiian Act of 1905.

Where a statutory amendment of an income tax law requires the inclusion in gross income of the amount of sales of movable property "less the amount expended in the purchase or production of the same," and also authorizes the deduction from gross income of necessary expenses of a trade or business, the latter provision being continued from the prior act, a taxpayer need include in income from sales of movable property only the amount specified in the provision quoted, even though part of the expenses incurred in production of the property sold have already been deducted from gross income when computing tax due for prior years.

Case No. 137

In re Smith,

16 Haw. 796 (1905). Hawaiian Act of 1901.

A surveyor cannot deduct from gross income when computing net income for the purposes of income taxation an amount representing expenditures for necessary instruments, books, etc., used in carrying on his profession.

Case No. 138

In re Wilder S. S. Company,

16 Haw. 567 (1905). Hawaiian Act of 1901.

No deductible loss is realized, under an income tax statute permitting a deduction from gross income when computing net income, of losses sustained in trade, by



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reason of the breaking up and scrapping of a vessel twenty-five years old, which originally cost \$18,500, and the scrap value of which was less than \$1,000, as a result of requirements of federal authorities that expensive repairs be made before the vessel continue in trade, for although certain losses of capital are deductible "this is not a loss which for the purpose of taxation is to be measured by the estimated earnings which the steamer might have made if it could have continued running; nor was it a loss to be measured by the cost of replacing it with a new steamer."

Case No. 139

Jacobs and Davies v. Anderson,

228 Fed. 505 (C. C. A., 2d Circ.) 1915. Act of 1909.

Where a corporation agreed with two of its stockholders to pay them \$6,000 per year for their services, plus a share of the profits to be determined by subtracting from gross income all expenses, including the salaries, and subtracting from the balance 10 per cent. to be paid as dividends, the balance being payable to the two stockholders as additional compensation, such balance is profit of the corporation and is subject to tax, as it does not appear that such balance was paid for services actually rendered but does appear to be based on stockholdings.

Case No. 140

Laemmle v. Eisner,

(D. C., S. D. N. Y.) Opinion of Judge Sheppard, 1920. Act of 1913.

Attorney's fees paid in litigation for the mastery of corporate stock resulting in practically the ownership or control thereof and the consequent management of the

company under the circumstances disclosed (but not in the opinion) constitute a capital investment and not a "necessary expense actually paid in carrying on the business," deductible from income derived from such business, when computing net income subject to tax.

Case No. 141

Mente v. Eisner,

266 Fed. 161 (C. C. A., 2d Circ.) 1920. Act of 1913.

(1) A member of a firm in the business of manufacturing bags and bagging is not entitled to deduct from gross income losses incurred in dealing independently in cotton futures, where he did not give enough time and attention to such dealing as to constitute it a separate trade or business, this construction of "losses . . . incurred in trade," adopted by the Treasury Department, being approved. While it may be inconsistent to include profits from such transactions, but to disallow losses, this is no objection, because "tax laws are not required to be perfect, or even consistent."

(2) Dissenting opinion by Judge Manton, on the ground that the construction is more narrow than the authorities warrant.

Case No. 142

31 Opinion Attorney General, 617,

Rendered by A. Mitchell Palmer, May 19, 1919. Act of 1918.

Corporations are not entitled to deduct from their gross incomes for the purposes of the income tax the amount of contributions made to religious, charitable, scientific or educational corporations or associations, including associations such as the Red Cross and kindred organizations.

Case No. 143

Opinion of the Attorney General,

**Rendered by A. Mitchell Palmer (Op. Ag., 1, Income Tax Rulings) 1920.
Act of 1918.**

The amount of the federal estate tax is not deductible from gross income of the estate when computing its taxable net income, since the estate tax is a charge upon the passing of the estate and never becomes a part of the estate, but is held in trust for the United States by the executor.

Case No. 144

Prentiss v. Eisner,

260 Fed. 589 (D. C., S. D. N. Y.) 1919. Act of 1913.

The transfer tax upon a legacy or distributive share of an estate imposed by the laws of New York is not an imposition upon either the property passing or the right to receive it, but a deduction from the estate of the decedent, and may not be deducted from the gross income of the legatee or distributee when computing net income subject to tax.

Affirmed 267 Fed. 16.

Case No. 145

Prentiss v. Eisner,

267 Fed. 16 (C. C. A., 2d Circ.) 1920. Act of 1913.

The New York tax on transfers of property by decedents, under which the amount of the tax is deducted from the various legacies although constituting a lien payable by the executor or administrator is a tax on the right to

transfer property upon death and is not a tax on the legatee; the latter may not therefore when computing net income subject to income tax deduct from gross income the amount of the transfer tax subtracted from her legacy.

Affirming 260 Fed. 589.

Case No. 146

Southern Pacific Ry. Company v. Meunter,

260 Fed. 837 (C. C. A., 9th Circ.) 1919. Act of 1909.

A corporation computing annual income under the Act of 1909, may not deduct as a loss actually sustained during the year or as interest paid an aliquot part of total discount at which an issue of bonds was previously sold, although a sum equal to such part is set aside on its books as properly assignable to that year.

Case No. 147

**Traylor Engineering and Manufacturing Company v.
Lederer,**

266 Fed. 583 (D. C., E. D. Pa.) 1920. Act of 1916.

A corporation munitions manufacturer which has contracted with two individuals that upon their contribution to the expense of sending an agent abroad and lending their personal influence to the success of the contemplated project it would share with them the profits from the venture on an agreed basis, may not deduct from gross income when ascertaining net income subject to tax the shares of the profits paid to the individuals as a result of such contract, but it is taxable on the whole of such profits, where the share of profits allowable to the individuals is in ratio of \$1,000 to each \$1 invested by them,

since the amounts paid them bear no normal relation to the value of the services rendered and the loan made.

Case No. 148

United States v. Aetna Life Insurance Company,

260 Fed. 333 (D. C., Conn.) 1919. Act of 1909.

A corporation owning stock of another corporation which did not include as income the amount of taxes paid on its behalf by the corporation whose stock is owned, may not deduct from gross income such amounts as "taxes paid" since allowable deductions on account of taxes are clearly defined as "all sums paid by it," not, "all sums paid by it or on its behalf."

Case No. 149

United States v. Mayer,

26 Fed. Cas. 15753 (D. C., D. Ore.) 1865. Act of 1864.

Under the Act of 1864, a merchant may deduct from gross income, as a business expense the amount of debts which he honestly believed were bad at the end of the year, and the action he took with reference to them at that time is better evidence as to his good faith than are claims and opinions formed after a controversy has arisen.

Case No. 150

United States v. Philadelphia Knitting Mills Company,

(D. C., E. D. Pa.) 1920. Act of 1909.

The amount of salary paid an officer of a corporation, who is also a stockholder, which the corporation may deduct from gross income as an ordinary and necessary expense is to be determined by answer to the question of

how much of what is paid, is paid by way of distribution of profits—the amount paid as distribution of profits not being deductible—and such question can only be answered by findings based on evidence, and if there is no evidence all of such payments are deductible; the question is not to be determined by submitting to a jury the question what is a reasonable salary and assuming that all beyond this sum is a distribution of profits, not because Congress could not limit the deductible salaries, but because it has not done so, and there is practically no guide to determine what should be paid or measure of payment other than the judgment of those whose money is being paid.

Case No. 151

Alzheimer & Rawlins Inv. Company v. Allen,

246 Fed. 270 (D. C., E. D., Mo.) 1917. Act of 1909.

The restriction on the deduction of interest contained in the Act of 1909 must be literally read; thus, an investment company dealing largely in the purchase and sale of securities may not deduct interest on an amount of capital greater than its paid-up stock, even where its indebtedness is a normal incident to its business and is necessitated by the purchase from it by customers of securities on credit.

Affirmed 248 Fed. 688; certiorari denied 248 U. S. 578.

Case No. 152

Alzheimer & Rawlins Inv. Company v. Allen,

248 Fed. 688 (C. C. A., 8th Circ.) 1918. Act of 1909.

An investment company engaged in buying and selling securities may not deduct interest on indebtedness

greater in amount than its capital stock, even where purchases by customers on credit necessitate borrowing large amounts of capital, since the company is not an agent of the purchaser in making such loans, but borrows on its own account and makes a profit on the transactions in that the purchaser of securities is charged a rate of interest greater than the rate at which the company borrows.

Affirming 246 Fed. 270; certiorari denied 248 U. S. 578.

Case No. 153

Anderson v. Forty-two Broadway,

213 Fed. 777 (C. C. A., 2d Circ.) 1914. Act of 1909.

(1) A corporation with a paid in capital of \$600 may deduct as an expense necessary to the continued use of its property, the entire amount of interest paid on its bonded indebtedness secured by said property, notwithstanding the limitation in the Act that interest on a principal amount not greater than its paid-up capital stock may be deducted, since the indebtedness meant is that "which is not an ordinary expense of maintenance nor a charge, payment of which is a condition of the continued use or possession of the property."

(2) A corporation may be subject to the tax though in point of fact there was no net income at all; liability to the tax depends upon whether there is net income according to the terms of the Act.

Affirming 209 Fed. 991; reversed 239 U. S. 69.

Case No. 154

Anderson v. Forty-two Broadway,

239 U. S. 69 (1915). Act of 1909.

The Act of 1909 being an excise tax, it is unnecessary that only true income be used as a basis for taxation; it was not therefore unreasonable for Congress to forbid the reckoning of all interest paid when computing the tax, and the line drawn at an amount not in excess of that paid on a principal no greater than the capital stock was not arbitrary. A specific limitation as to the deduction of interest precludes deduction thereof as a business expense or otherwise.

Reversing 209 Fed. 991 and 213 Fed. 777.

Case No. 155

Associated Pipe Line Company v. United States,

258 Fed. 800 (C. C. A., 9th Circ.) 1919. Act of 1909.

(1) A pipe line corporation with an ordinary charter, 50 per cent. of whose stock was held by two producing corporations, which does business in the ordinary way, is a corporation organized for profit, not a mere "convenient agent" of the two stockholding corporations, and is not exempt.

(2) Since stock was not actually issued until 1911, before that time there being no outstanding stock but only large credit balances representing cash advances made by the two producing corporations, there was during the taxable year no paid-up capital stock and therefore no interest was deductible.

(3) A statement made by a corporation's auditor to an internal revenue agent that the corporation had

no paid-up capital stock is admissible as against the corporation.

Case No. 156

Boston and M. R. Company v. United States,

265 Fed. 578 (D. C., Mass.) 1920. Act of 1909.

The provision that deductions from gross income on account of interest paid shall be limited to interest paid on indebtedness in amount "not exceeding the paid-up capital stock . . . outstanding at the close of the year," means that a deduction on account of interest paid is limited to interest paid on indebtedness equivalent to the par value of stock outstanding, but not exceeding that, and it is immaterial that a state statute enacted to accomplish a different purpose otherwise defines "paid-up capital stock."

Case No. 157

Forty-two Broadway v. Anderson,

209 Fed. 991 (D. C., S. D. N. Y.) 1913. Act of 1909.

A corporation with a capital stock of \$600 and a bonded indebtedness of \$5,000,000 is allowed to deduct from gross income the entire amount of its interest paid, where its business is the operation and rental of real estate since the general purpose of the act is to tax net income, and the corporation in fact had no net income. Although deduction of interest beyond that paid on a principal-equivalent to capital stock is forbidden by the act, in this case the excess of interest may be deducted as a payment "such as rentals or franchise payments required to be made as a condition to the continued use or possession of property,"

for if the interest had not been paid, the taxpayer would have been evicted from its property.

Affirmed 213 Fed. 777; reversed 239 U. S. 69.

Case No. 158

Middlesex Banking Company v. Eaton,

221 Fed. 86 (D. C., Conn.) 1915. Act of 1909.

A corporation which loans money on farm mortgages and in turn borrows funds from the public by issuing so-called "bonds" and "real estate securities," making profit through the difference in rates at which such funds are loaned and borrowed, is not entitled to a deduction equal to the interest paid on a principal amount of indebtedness greater than its paid-up capital stock since the corporation is not a banking corporation, and the deduction may not be taken by way of business expense, because it is interest, the deduction of which is specifically regulated by the statute.

Affirmed 233 Fed. 87.

Case No. 159

Middlesex Banking Company v. Eaton,

233 Fed. 87 (C. C. A., 2d Circ.) 1916. Act of 1909.

A corporation whose business it is to loan money, taking as security the borrower's mortgage, and which in turn sells its own obligations bearing a low rate of interest, may not deduct under the Act of 1909 the interest paid thereon in excess of interest on indebtedness greater than paid-up capital stock, since that interest is not interest paid to depositors by a banking corporation and the statute forbids its deduction except in that case.

Affirming 221 Fed. 86.

Case No. 160

28 Opinion Attorney General, 198,

Rendered by George W. Wickersham, February 21, 1910. Act of 1909.

A corporation may not deduct interest on an indebtedness of its own greater than its paid-up capital stock, whether or not payment of the excess interest is a payment necessary to continued occupation of its property, except that interest paid on indebtedness against the property occupied, but not "assumed" by the occupant, may be deducted without reference to the limitation, since such interest is not interest on "its" indebtedness.

Case No. 161

Stern Milling Company v. Wisconsin Tax Commission,

175 N. W. 931 (Wisc.) 1920. State Act of 1917.

(1) The provisions of a statute taxing net income which allow the deduction from gross income when computing income of "sums paid . . . for taxes imposed by any state . . . or any territory or possession of the United States upon the source from which the income taxed is derived" and "ordinary and necessary expenses" do not authorize the deduction of federal income taxes.

(2) A tax upon income is not a tax upon property from which it is derived, under the Wisconsin statute.

(3) A tax is the price which every citizen must pay for the privileges and protection of government.

(4) An express allowance of deduction for taxes imposed excludes the allowance of any taxes not enumerated, on the ground that such taxes are an ordinary and necessary expense.

(5) Subsequent enactment by legislature, allowing the

deduction claimed, evidences that it was not theretofore allowable.

Case No. 162

United States v. New York and H. R. Company,

265 Fed. 331 (D. C. Conn.) 1919. Act of 1909.

The provision that deductions from gross income on account of interest paid shall be limited to interest paid on indebtedness in amount "not exceeding the paid-up capital stock . . . outstanding at the close of the year," means that a deduction on account of interest paid may be made only of interest which was paid on indebtedness in amount not exceeding the par value of shares outstanding at the end of the year plus the amount received for any part-paid stock, and no premium paid in for outstanding stock may be included.

Case No. 163

Eliot National Bank v. Gill,

210 Fed. 933 (D. C. Mass.) 1913. Act of 1909.

(1) Taxes assessed against bank shares and required to be paid by the bank with a right of recoupment against the shareholder by the bank, the law giving credit to the tax districts of the respective shareholders for such taxes paid, are not taxes paid by the corporation within the meaning of the deduction clause, since that clause contemplates only taxes imposed on the corporation itself.

(2) The Commissioner may assess additional taxes in any case where the return was incorrect, provided only the error was discovered within three years from the date the return was due, as "false and fraudulent" as used in the

third subdivision of Section 38 does not mean with such intent except where so specified.

(3) The three-year period mentioned is computed by excluding the first day and including the last day.

Affirmed 218 Fed. 600.

Case No. 164

Eliot National Bank v. Gill,

218 Fed. 600 (C. C. A., 1st Circ.) 1914. Act of 1909.

(1) A tax payable upon shares of bank stock assessed to the owner thereof, the statute providing that the latter's home tax district should receive credit for the amount of the tax, is a tax on the stockholder and may not be deducted by the bank, even where the bank is made liable for the collection of and pays the tax.

(2) A provision that in the case of false or fraudulent returns the Commissioner shall have power "upon the discovery thereof at any time within three years after said return is due" to make additional assessment, does not require that the falsity which the Commissioner is thus authorized to correct be fraudulent. It is sufficient that the discovery of the falsity be made within three years; the assessment required thereby may be made thereafter.

Affirming 210 Fed. 933.

Case No. 165

First National Bank of Jackson v. McNeel,

238 Fed. 559 (C. C. A., 5th Circ.) 1917. Act of 1909.

A state statute requiring a bank to make return of its capital in order to determine a valuation basis for the imposition of taxes on its shares "to the holder or of the

capital to the owner thereof," and further requiring payment by the bank, is a tax on the shareholders, even though no provision is expressly made giving the bank the right to recover from its shareholders, since this does not show the right does not exist, state (Miss.) courts having held the tax to be the shareholder's.

Case No. 166

National Bank of Commerce v. Allen,

211 Fed. 743 (D. C., E. D. Mo.) 1914. Act of 1909.

Only taxes imposed upon a taxpayer corporation itself may be deducted from gross income by such corporation when computing net income; therefore, where a state imposes a tax upon bank shares, requiring as a means of collection that the bank pay the tax and recoup itself against the shareholders, no deduction is allowable to banks on account of such taxes.

Affirmed 223 Fed. 472.

Case No. 167

National Bank of Commerce v. Allen,

223 Fed. 472 (C. C. A., 8th Circ.) 1915. Act of 1909.

(1) A tax levied by a state on the shares of stock of national banks and requiring the president or other officer to pay the tax and be reimbursed from dividends on the shares is a tax on the shareholders and may not be deducted as a tax by the bank.

(2) Since deductions on account of taxes paid are specifically provided for in the law, no taxes may be deducted as business expenses.

(3) "False" as used in subdivision 5 means "untrue"

or "incorrect," as opposed to fraudulently or intentionally false.

Affirming 211 Fed. 743.

Case No. 168

**Northern Trust Company v. McCoach;
Pennsylvania, etc., Company v. McCoach;
Philadelphia Trust Company v. McCoach;
Fidelity Trust Company v. McCoach,**
215 Fed. 991 (D. C., E. D. Pa.) 1914. Act of 1909.

(1) A state tax imposed on the shares of national bank stock owned by the state's citizens is not a tax imposed on the bank and the amount thereof is not therefore deductible by the bank from gross income as a tax, even though under the state law the banking corporation may, and actually does, pay the tax for its stockholders.

(2) Tax laws should be given the same construction by all courts throughout the territorial limits within which the tax is levied.

Case No. 169

United States v. Guaranty Trust and Savings Bank,
253 Fed. 291 (D. C., S. D. Fla.) 1918. Act of 1909.

A banking corporation organized under the laws of Florida may deduct, when computing net income under the Act of 1909, taxes paid by it on its stock under a statute making the stockholder liable therefor, if the tax is not paid by the corporation whose stock is owned, since it was the intention of the legislature to make the bank return its stock for taxation, and the primary obligation to pay is on the bank.

Case No. 170

Hawaiian Commercial and Sugar Company v. Tax Assessor,

14 Haw. 601 (1903). Hawaiian Act of 1901.

A corporation which builds in a different location on its property another and different mill and railroad designed to take the place of the mill and railroad already existing, but which have become outgrown, cannot deduct from gross income when computing net income the value of the old mill and railroad on the theory that the loss was a loss "actually sustained during the year incurred in trade" or was "otherwise incurred," for the corporation still has what it had before.

Case No. 171

In re First American Savings and Trust Company, et al.,

15 Haw. 502 (1904). Hawaiian Act of 1904.

Under a provision of an income tax law which allows as a deduction from gross income to determine net income "all losses actually sustained during the year incurred in trade . . . or losses otherwise actually incurred," losses of capital used in business may be deducted if they occur during the tax year, as for example bank loans lost during the year though made prior thereto, notes given in payment for merchandise but which become valueless during the year, etc., and more or less latitude should be allowed as to when debts have become worthless.

Case No. 172

In re H. Hackfeld and Company, Ltd.,

16 Haw. 559 (1905). Hawaiian Act of 1901.

Where a taxpayer owns all of the stock of a corporation which is indebted to him in large amount, writes off to profit and loss a part of the debt owing, and thereafter continues to make advances to the corporation, the amount so written off cannot be deducted from gross income as a loss sustained, since "the estimate of the loss did not become an actual loss by the mere act of writing it off to profit and loss."

Case No. 173

In re Pacific Guano and F. Company,

16 Haw. 552 (1905). Hawaiian Act of 1901.

A corporation which purchased property estimated to be worth \$85,000 prior to 1896 did not suffer a loss in 1903 by the discovery in that year that the property was when purchased worth only \$30,000, for the loss occurred when the purchase money was paid, and is not to be taken into account when computing net income for 1903.

Case No. 174

Cohen v. Lowe,

234 Fed. 474 (D. C., S. D. N. Y.) 1916. Act of 1913.

(1) A reasonable allowance for exhaustion, wear and tear, excludes an allowance for loss in value due to change in neighborhood of an apartment building. The allowance authorized is to be based on the life of the building, i. e., the time during which it could be used for the purposes

for which it was erected, and is to be determined by a fraction having one for its numerator and the ascertained life of the building for its denominator.

(2) Where the profits of a partnership were ascertained on the basis of a fiscal year having its beginning before the effective date of the law, the burden is on the taxpayer to show what part of the earnings were accumulated before that date. In the absence of such showing the entire amount received will be deemed taxable income, even though the taxpayer cannot as a practical matter make such showing.

(3) Congress did not intend to permit credits against net income for the purposes of the surtax imposed by the Act of 1913; not was it necessary that it should do so.

Case No. 175

**In re Ewa Plantation Company,
18 Haw. 530 (1908). Hawaiian Act of 1905.**

A deduction for depreciation cannot be made where the statute provides only for deductions on account of "necessary expenses actually incurred," "losses actually sustained," and "losses otherwise actually incurred," and this is as true of the loss theoretically or practically sustained on account of the expiration of a leasehold as on account of wear and tear on tangible property.

Case No. 176

**Little Miami Railway Company v. United States,
108 U. S. 277 (1883). Civil War Acts.**

(1) In determining profits it was proper to deduct from gross income amounts representing depreciation in

the value of bonds and stocks, book accounts and other choses in action, and depreciation of equipment.

(2) In a suit by the government to recover tax, the burden is on the government to prove the tax is due.

Reversing 1 Fed. 700.

Case No. 176 A

Nashville, Chattanooga & St. Louis Ry. Co., v. United States,
T. D. 3125 (C. C. A., 6th Circ.) 1920. Act of 1909.

A railway company may not make a deduction on account of depreciation from gross income, when, because of repairs, renewals and/or replacements to the various units of the railroad, or because of appreciation of some units offsetting depreciation in others, the road as a whole is of as great a value at the end of the year, as it was at the beginning.

Case No. 177

New York Life Insurance Company v. Anderson,
263 Fed. 527 (C. C. A. 2d Circ.) 1920. Act of 1909.

(1) "Depreciation" means "fall in value; reduction of worth." Therefore, a reduction of value of securities because of a change in market conditions should be allowed as a deduction from gross income under the head of depreciation.

(2) In a suit to recover taxes paid under protest, defendant may introduce any evidence tending to show that nothing is due, except that he may not embarrass the plaintiff by way of surprise or other inequity.

(3) The difference between premiums received by a mutual insurance company, and the cost of insurance,

is not income, where the excess is returned to the policy holder whether the return of such difference is voluntary or required by law.

(4) Interest may be awarded in a suit against a collector for the return of taxes illegally collected.

Modifying 262 Fed. 215.

Case No. 178

San Francisco & P. S. S. Company v. Scott,

253 Fed. 854 (D. C., N. D. Calif.) 1918. Act of 1909.

In computing net income a corporation may deduct from gross income maintenance expenses, in addition to the charge for depreciation, since "depreciation, as used in the statute is not to be confused with ordinary repairs. It is intended to cover the estimated lessening in value of the original property if any due to wear and tear, decay, or gradual decline from natural causes, inadequacy, obsolescence, etc., which at some time in the future will require the abandonment or replacement of the property in spite of ordinary current repairs."

Case No. 179

Biwabik Mining Company v. United States,

242 Fed. 9 (C. C. A., 6th Circ.) 1917. Act of 1909.

(1) "Income" when used in an excise tax act means the same as "income" when used in an income tax act.

(2) When the value of ore in place can be accurately determined, the value of that part extracted and sold should be subtracted from gross income in order to determine net income.

(3) That the taxpayer is a lessee is immaterial, since

each ton of ore mined reduces by so much the capital value of the lease right.

Reversed 247 U. S. 116.

Case No. 180

Forty Fort Coal Company v. Kirkendall,

233 Fed. 704 (D. C., N. D. Penn.) 1915. Act of 1909.

(1) A coal mining company exploiting its own property may claim as a deduction by way of depreciation or depletion the fair value in place as of January 1, 1909, of each ton of coal mined during the taxable year.

(2) The government cannot base a claim for taxes on mere bookkeeping.

Case No. 181

Goldfield Consolidated Mines Company v. Scott,

247 U. S. 126 (1918). Act of 1909.

(1) A mining corporation is not entitled under the act considered to any allowance whatever on account of the depletion or exhaustion of ore bodies caused by its operations during the year for which the tax is assessed.

(2) Nor is it entitled to a deduction from gross income when determining net income equal to the cost value of the ore in the ground before it was mined.

Case No. 182

Karr Piquet Mining Company v. Platteville,

157 N. W. 763 (Wisc.) 1916. State Act of 1916.

A mining corporation which has an indefinite lease, and which pays a royalty per ton of ore mined, is entitled to no deduction on account of the removal of the ore, except

the amount paid as royalty, since a leasehold is not equivalent to ownership for purposes of income taxation. The lessee is in a position comparable to a manufacturer; a deduction from gross income equal to the cost of raw material consumed is allowed to each.

Case No. 182 A

Opinion Attorney General,

T. D. 3089, rendered by A. Mitchell Palmer, 1920. Act of 1918

(1) A deduction for depletion in the case of mines, oil and gas wells, as the result of discovery on or after March 1, 1913, is allowed only to the party or parties in possession at the time of the discovery and not to subsequent purchasers.

(2) The value which may be set up in the case of the discovery of mines, oil and gas wells, pursuant to the second provision of Section 234 (a) (9) to be depleted in accordance with such rules and regulations as the Commissioner may prescribe according to the peculiar conditions in each case, is, in the case of a lease, to be equitably apportioned between the lessor and lessee.

Case No. 183

Stanton v. Baltic Mining Company,

240 U. S. 103 (1916). Act of 1913.

(1) The Act of 1913 is not invalid because of alleged discrimination between depreciation allowed mining corporations and other corporations or because of progressive rates of taxation or disallowance to corporations of a deduction from gross income of the value of dividends received from other corporations.

(2) The limitation of depreciation allowance to mining companies to 5% of gross mine value of ore removed

does not render the tax invalid as being partly on property rather than on income where actual depreciation sustained was greater than 5%, for such a tax is "a true excise levied on the results of the business of carrying on mining operations."

Case No. 184

State ex rel. Pfister Land Company v. Milwaukee,
165 N. W. 23 (Wisc.) 1917. State Act of 1911.

(1) Royalties paid by a lessee mining corporation to the lessor are income, and not converted capital.

(2) A "reasonable allowance for depreciation of property" has reference to ordinary depreciation of business structures and personalty, and excludes depletion.

(3) Mining royalties are in effect payment for use and occupation and come within the term "rentals."

(4) Where the property leased lies without the state, the term "rentals" is to be defined, not by the interpretation given by the courts of the state in which the property is, but with a view to the intention of the legislature enacting the law.

Case No. 185

Stratton's Independence v. Howbert,
207 Fed. 419 (D. C. Colo.) 1912. Act of 1909.

(1) A corporation operating mining property is not entitled to a deduction from gross income equal to the value of the ore extracted, since the net income of mining corporations is the value of what is extracted, less the cost of extraction and kindred expenses, plus a reasonable allowance for contingencies.

(2) The "reasonable allowance for depreciation" does not contemplate an allowance for so-called wastage of

the property, since depreciation does not ordinarily comprehend the removal of ore, timber, etc.

(3) The tax being an excise tax, it is constitutional to measure it by income, although income itself may not be taxable.

Affirmed 231 U. S. 399.

Case No. 186

United States v. Biwabik Mining Company,

247 U. S. 116 (1918). Act of 1909.

A mining company which paid \$612,000 for a lease enabling it to enter upon lands and remove ore, upon payment of royalties, may not for the purpose of computing net income subtract from its yearly gross income that part of the value of the ore mined representing its value in place when the law took effect, since the lease did not convey the ore in place but only conferred a privilege of mining.

Case No. 187

United States v. Nipissing Mines Company,

202 Fed. 803 (D. C., S. D. N. Y.) 1912. Act of 1909.

(1) A mining corporation is allowed a deduction as depreciation (not as "return of capital") equal to the value of the ore in place, which was removed.

(2) There is no distinction between depreciation of an ore bed and of machinery.

(3) The tax cannot be based on bookkeeping entries.

Affirmed on other grounds, 206 Fed. 431; certiorari denied 234 U. S. 765.

Case No. 188

Von Baumbach v. Sargent Land Company,

242 U. S. 503 (1916). Act of 1909.

(1) Mining leases executed under the laws of Minnesota are not sales of the ore in place, and rents and royalties therefrom are profits subject to tax.

(2) It is not unconstitutional for Congress to tax royalties from mining operations as income, without allowance for return of capital value, for it is not every exhaustion of capital that must be considered.

(3) The "allowance for depreciation" permitted does not authorize a lessor of mining property to make a deduction on account of depletion, since "depreciation" was used in its ordinary sense.

Reversing 207 Fed. 423 and 219 Fed. 31.

Case No. 189

Weiss v. Mohawk Mining Company,

264 Fed. 502 (C. C. A., 6th Circ.) 1920. Act of 1916.

(1) The deduction for depletion allowed in the act considered "belongs of right to the fee owner" and a lessee under a lease contract which does not pass title in fee can claim no allowance on account thereof.

(2) For the purpose considered, "depreciation," "consumption of capital assets" and "depletion" may be said to have an equivalency of meaning.

Certiorari denied 41 Sup. Ct. 12.

Case No. 190

Bailey v. Railroad Company,

106 U. S. 109 (1882). Act of 1864.

An income tax act which, *inter alia*, levies a tax against carrier corporations with reference to moneys paid in bond interest, in dividends and in construction, raises a presumption only that such payments are income of the corporation; thus, when tax has been paid in one year with reference to the amounts used in construction, and a scrip dividend is the next year paid and charged against the enhanced value of the property account resulting from such construction, the latter dividend is not a basis for taxation of the corporation, the income which is represented thereby having already been once taxed.

Case No. 191

Barnes v. The Railroads,

84 U. S. 294 (1872). Act of 1864.

(1) That section of the Act of 1864 levying a tax with respect to dividends paid, and indemnifying the paying corporation, which was required to withhold the amount of the tax, against claims by the recipient of the dividend for the amount withheld, imposed a tax on the paying corporation.

(2) Dissenting opinion took opposite view, but said that if the tax were an income tax on the recipient, the dividends and interest would be income of the year in which they became payable, relying on a ruling of the Commissioner of Internal Revenue.

Case No. 192**Brady v. Anderson,****240 Fed. 665 (C. C. A., 2d Circ.) 1917. Act of 1913.**

(1) An individual who died July, 1913, before the passage of the Act, is nevertheless liable to income tax with respect to income received after March 1, 1913, and the duty is on his executors to make return for him and pay the tax.

(2) The income tax is not a property tax but is a personal tax measured by the amount of income received.

Case No. 193**Butterick Company v. United States;****Federal Publishing Company v. United States,****240 Fed. 539 (D. C., S. D. N. Y.) 1917. Acts of 1909 and 1913.**

(1) The tax imposed during January and February, 1913, was by the Act of 1913 and not the Act of 1909, although it was like the Act of 1909 an excise tax for those months. The allowable deductions for the return covering those months were governed by the Act of 1913.

Case No. 194**Faulkner v. Trefry,****118 N. E. 229 (Mass.) 1918. State Act of 1916.**

(1) A statute imposing an income tax "in the year 1917 and each year thereafter," and declaring that "the income received by persons since deceased shall be taxed to their estates" does not clearly impose a retroactive tax, and no tax is collectible from an executor on account of income received by a decedent between January 1, 1916, and November 29, 1916, on which date he died,

and by his estate between November 29, 1916, and January 1, 1917.

(2) A taxing statute not declared to be retroactive cannot be made so by implication.

Case No. 195

Glasgow v. Rowse

43 Mo. 479 (1869). State Act of 1865.

(1) A statute levying a tax on income received in the year next preceding assessment means that the fiscal year used by the state for the assessment of other taxes shall be used, and the collector has no authority to designate a different year.

(2) A legislature has inherent power to levy taxes, and a constitutional provision that "taxation upon property shall be in proportion to its value" does not preclude the levy of an income tax on all incomes above \$600, since the provision has reference only to *ad valorem* taxes on property, the tax imposed on income not being a property tax.

Case No. 196

Goldman v. Trefry,

120 N. E. 74 (Mass.) 1918. State Act of 1916.

A pawnbroker who loans money upon and deals in secondhand articles is taxable upon interest received upon loans made in the course of such business as "interest . . . from money at interest," rather than as money "received from dealing and trafficking in intangible personal property."

Case No. 197

Greenport Basin and Construction Company v. United States,

269 Fed. 58 (D. C., E. D. N. Y.) 1920. Acts of 1917 and 1918.

(1) Under Section 252, Act of 1918, taxes collected under color of the Act of 1917 may be recovered as a matter of right, and it is not necessary to show duress or protest in connection with payment thereof; and even if such showing were necessary, it is sufficiently met by computation of the tax under compulsion of the regulations and the filing of a claim in abatement of the taxes assessed before payment.

(2) That part of the Act of 1917 providing for the levy of a tax of "twenty percentum of the amount of the net income in excess of the deduction . . . and not in excess of fifteen percentum of the invested capital for the taxable year; twenty-five percentum of the amount of the net income in excess of fifteen percentum and not in excess of twenty percentum of such capital; thirty-five percentum of the amount of the net income in excess of twenty percentum and not in excess of twenty-five percentum of such capital," *et cetera*, means that the tax is to be computed by subdividing the net income according to the percentages of invested capital given, subtracting the allowable deduction from that part of the income falling within the lower subdivisions and computing the taxes on the remainder at the rates specified, rather than by subtracting from the entire net income the amount of the allowable deduction, and subdividing the remainder of the income according to the percentages of invested capital given before computing the taxes at the rates set forth.

Case No. 197 A

Home Mutual Insurance Company v. Stockdale,
Fed. Cas. 6662 (C. C., D. La.) 1872. Acts of 1867 and 1870.

(1) A dividend declared and made payable in 1870 is income to the stockholder for that year regardless that it was earned in the preceding year.

(2) An Act of Congress declaring that a previous taxing act which had expired by its own terms should be "construed" to extend to a later date does not impose the duty of withholding taxes on dividends paid in the interim between the expiration and renewal of the Act.

Affirmed 87 U. S. 323.

Case No. 198

In re J. B. Castle,
18 Haw. 129 (1906). Hawaiian Act of 1905.

A taxpayer who purchased stock in 1898 and sold it in 1905 at a profit need not return such income for taxation under a statute imposing a tax on all income derived "during said taxation period."

Case No. 199

Jackson v. Northern Central Ry.,
Fed. Cas. 7142 (C. C., D. Md.) 1865. Act of 1864.

The tax required by the Act of 1864 to be withheld on dividend and interest payments is an income tax of the obligee; therefore, no withholding is required on such payments made to nonresident aliens, since the Act does not impose a tax on them.

Affirmed 74 U. S. 268.

Case No. 200

Lawrence v. Wardell,**T. D. 3102 (D. C., N. D. Cal.) 1920. Act of 1916.**

Citizens of the United States by reason of circumstances other than that they are citizens of a possession of the United States but who reside in the Philippines are taxable in the same manner as citizens of the United States who reside therein.

Case No. 201

Lining v. Glen,**1 McChord (S. C.), 345 (1821). Local Act.**

Where a taxing act requires all personal property to be assessed at one-half of its value, and levies an income tax on all incomes over \$800, only such incomes one-half of the amount of which exceeds \$800 are taxable, since income is property and it may be assessed at only one-half of its value.

Case No. 202

Maguire v. Tax Commission,**120 N. E. 162 (Mass.) 1918. State Act of 1918.**

(1) Income received by a Massachusetts beneficiary from securities held in trust in Pennsylvania and there taxed to the trustee is exempted from income taxation in Massachusetts under a statute which provides that the tax shall not be imposed "upon any person in respect to income derived from any property exempt from taxation" by prior law, such prior law providing that property held in trust outside the commonwealth shall be assessed at the

place the trustee resides, but if not there taxed, then to be taxed to the beneficiary within the state.

(2) The general rule that personal property is taxable at the domicile of the owner still obtains as to stocks, bonds and like property.

(3) It is not unconstitutional to tax to a resident of Massachusetts income from securities not taxed to the trustee in Pennsylvania where the trust was created and administered.

Affirmed 253 U. S. 12.

Case No. 203

Mandell v. Pierce,

Fed. Cas. 9008 (C. C. Mass.) 1868. Act of 1864.

Under a statute imposing a tax on annual income, the estate of a person who dies in July is subject to tax with respect to such income as accrued before her decease, and her executor is liable to make the return and pay the tax, although *semble* full credits are allowed, as if the return were made for a full year. Legacy taxes which attach upon a decedent's death cannot be said to be in lieu of income tax otherwise payable by reason of income received before death.

Case No. 203 A

Merchants Insurance Company v. McCartney,

Fed. Cas. 9443 (C. C. Mass.) 1870. Act of 1864.

(1) A tax levied on dividends is a tax on the recipient thereof, though collected from the paying corporation.

(2) A dividend made up in part from earnings before and in part from earnings after the passage of the act is taxable only with reference to the latter part.

(3) When tax on dividends has been once exacted from the paying corporation, further tax is not collectible from a recipient stockholder corporation, even in the absence of specific exemption of dividends as income.

Case No. 204

Michigan Central R. Company v. Slack,

Fed. Cas. 9527-a (C. C. D. Mass.) 1876. Act of 1866.

Whether a tax on bond interest required to be withheld from bondowners and paid by the obligor corporation be a tax on the bond obligor or obligee, it is operative, even when the obligees are nonresident foreigners, for when the interest became payable it belonged to the obligor or the obligee; if the former, the tax could be sustained as there was jurisdiction over the person; if the latter, it could likewise be sustained as a tax on money within the jurisdiction.

Affirmed 100 U. S. 595.

Case No. 205

12 Opinion Attorney General, 402,

Rendered by O. H. Browning, May 8, 1868, Civil War Acts.

The provision of law requiring banks to withhold and pay to the government a tax of 5 % upon the amount of all dividends is a tax upon the owner of the stock, and when such owner is a state, the tax is not collectible.

Case No. 206

31 Opinion Attorney General, 148,

Rendered by A. Mitchell Palmer, August 7, 1917. Act of 1916.

The corporation franchise tax imposed by the laws of New York (Laws, 1917, ch. 726) is not "a general income

tax" within the meaning of the proviso of the Act of 1916 authorizing proper state officers of any state imposing a general income tax to inspect and abstract corporate returns of income required by federal law.

Case No. 207

People ex rel. Barcalo Manufacturing Company v. Knapp,
124 N. E. 107 (N. Y.) 1919. State Act of 1918.

(1) A law which provides for taxation on "net income . . . presumably the same as the income upon which such corporation is required to pay a tax to the United States" adopts the definition of net income used by the federal law, and the only authority of the taxing commission is to fix the true and correct amount of the income as defined.

(2) "Net income" returned to the federal authorities does not exclude the amount of excess profits tax paid which is allowed as a credit before computing federal income tax.

Case No. 208

People ex rel. Barcalo Manufacturing Company v. Knapp;
American Brush and Broom Company v. Knapp,
175 N. Y. S. 337 (1919). State Act of 1917.

An act which imposes a franchise tax on corporations equal to 3 % of their "entire net income" which is presumably the same as the income upon which the corporation is required to pay a tax to the United States, requires the tax to be computed on net income without subtraction of the excess profits tax, even though the federal income tax is imposed upon net income minus excess profits tax.

See 120 N. E. 686.

Case No. 209

Philadelphia and R. R. Company v. Barnes,

Fed. Cas. 11087 (D. C., E. D. Pa.) 1870. Act of 1867.

(1) Where an act imposes a general income tax and requires certain corporations to pay directly to the government a percentage of dividends declared, the requirement must be viewed as a tax on the stockholders' incomes but collected at the source for the government's convenience.

(2) A dividend declared in 1869, but made payable in 1870 is income for the year received.

Reversed as to point one, 84 U. S. 294.

Case No. 210

Plumer v. Commonwealth,

3 Grattan (Va.), 645 (1847). State Act of 1846.

(1) A statute imposing a tax on all yearly incomes over \$400 in money, accruing to any individual in consideration of the discharge of any office, "or in the service of any body politic, joint stock company or otherwise, or in the employment of any company, copartnership, individual or individuals" does not reach the salary of a minister of the gospel, since "employment" imports "business," and excludes the duties of a minister, who cannot be said to be in the "business" for "employment" of his congregation, and the congregation of a church is a body not known to the law.

(2) The fact that previous acts specifically exempted ministers while this act did not, does not necessarily require a decision that ministers' salaries are taxable.

(3) Where the public are to be charged with a burden,

the intention of the legislature to impose that burden must be explicitly and distinctly shown.

(4) A revenue law is properly classified as penal.

Case No. 211

Railroad Company v. Collector,

100 U. S. 595 (1879). Act of 1866.

(1) A statute imposing a tax on certain corporations in amount of 5 % on "interest or coupons, dividends or profits, whenever and wherever payable," and authorizing withholding of such amount of tax is an excise tax on the corporation, and *semble* it was not therefore unlawful to require such withholding from nonresident aliens.

Case No. 212

Railroad Company v. Jackson,

74 U. S. 268 (1868). Act of 1864.

(1) A state may not levy a tax on the interest of bonds of a railroad corporation whose property securing the bonds lies within and without the state and the company is incorporated in both states in which its property is, and where the bonds are held and owned by a nonresident alien.

(2) An act imposing an income tax on citizens and resident aliens, and authorizing the withholding from bond interest payments of the amount of the tax does not require a withholding in the case of bonds owned by nonresident aliens since it was not the intent to impose a tax on such persons, and a tax required to be withheld from bond interest is in fact a tax on the owner of the bonds.

Affirming Fed. Cas. 7142.

Case No. 213

Schuylkill Nav. Company v. Elliott,

Fed. Cas. 12497 (C. C. W. D. Pa.) 1876. Acts of 1867 and 1870.

(1) An Act of Congress which provides that a previous taxing act shall be "construed" to extend beyond its original date of expiration is effective as new legislation.

(2) Congress may impose a prospective tax by a new statute although the measure of the tax is governed by the income of the past year.

Case No. 214

State ex rel. American Manufacturing Company v. Koeln,

211 S. W. 31 (Mo.) 1919. State Act of 1917.

(1) When necessary to effect the intendment of an income tax law, "assessor" will be read as "collector."

(2) Allowance by the act of a deduction from income tax otherwise payable of taxes "paid . . . upon real or personal property to the state" excludes taxes paid to a school district.

Case No. 215

Stockdale v. Insurance Companies,

87 U. S. 323 (1873). Acts of 1869-70.

(1) Whether the tax on dividends arising from the earnings of a corporation for the year 1869 be viewed as a tax on the shareholder or on the corporation it was intended to tax the earnings for that year by the section which limited the duration of the tax.

(2) Section 17 of the Act of July 14, 1870, "construing" certain sections of the Act of 1864 to extend its pro-

visions to 1870, is not an attempt by the legislature to exert judicial functions and is valid as an extension of the law.

(3) Congress may enact a tax retrospectively.

Dissenting opinion holding that a tax on dividends requiring the obligor to withhold and pay is a tax on the shareholder, that the Act was not extended and since the dividends were declared in 1870 and were therefore income of that year to the taxpayer, the corporation was not required to withhold, since the law expired with 1869.

Affirming Fed. Cas. 6662.

Case No. 216

United States v. Erie Ry. Company,

106 U. S. 327 (1882). Act of 1866.

The tax directed against interest on corporate bonds by the Act of 1866 is in fact an excise tax on the corporate debtor and it is therefore collectible in cases where the bonds and the person owning them are both without the jurisdiction of the United States.

Reversing Fed. Cas. 15056.

Case No. 217

United States v. Grand Rapids and I. R. Company,

239 Fed. 163 (D. C. S. D. Mich. S. D.) 1915. Act of 1909.

(1) The three-year clause of the fifth subdivision of Section 38 of the Act of 1909 is not a limitation upon the right of the government to sue for unpaid taxes but at most is a limitation upon the right of the collecting officers to make assessment and enforce payment by summary statutory proceedings.

(2) In the collection of taxes imposed by statute, the

government is not confined to summary proceedings therein provided, but may resort to plenary suit.

(3) Where a tax of a fixed percentage is so definitely described that its amount can be determined on evidence by a court a suit for the tax will lie without assessment.

Affirmed 256 Fed. 153.

Case No. 218

United States v. Johnston,

124 U. S. 236.

The contemporaneous construction of a statute by those charged with its execution, especially when it has long prevailed, is entitled to great weight, and should not be disregarded or overturned except for cogent reasons unless it be clear that such construction is erroneous.

Case No. 219

United States v. Moore,

95 U. S. 760.

The construction given to statute by those charged with its execution is always entitled to the most respectful consideration and it ought not be overruled without the most cogent reasons.

Case No. 220

United States v. Nashville, C. & St. L. Ry.,

249 Fed. 678 (C. C. A., 6th Circ.) 1918. Act of 1909.

(1) The provision of the Act of 1909 for reassessment in case of false or fraudulent returns means untrue or incorrect and not necessarily "intentionally" or "fraudulently false."

(2) Where the law itself imposes a tax which can be made certain in amount by examination of evidence, an action of debt by the government will lie to collect it, even though the statute gives another remedy, by way of assessment.

(3) It may be assumed that no right of action would accrue to the government had there been true return and assessment based thereon, to recover an additional amount because of original error on the part of the Commissioner, or his subsequent change of mind as to the propriety of the amount assessed.

Case No. 221

United States v. Tilden,

Fed. Cas. 16519 (C. C., S. D. N. Y.) 1878. Civil War Acts.

(1) The Act of 1861 was repealed by the Act of 1862, without a saving clause as to taxes accrued thereunder but not paid, and no taxes under that Act could be collected after January 1, 1862.

(2) The government may sue for taxes due, whether or not its statutory remedies have been pursued as to all or any part of the tax claimed.

(3) The government is not estopped from suing for a tax greater in amount than that originally assessed.

Case No. 222

Wisconsin Trust Company v. Widule,

159 N. W. 630 (Wisc.) 1916. State Act of 1915.

(1) A statute requiring every fiduciary to make return of all income accruing in his hands for a beneficiary, is operative as to income from property bequeathed by a resident to a trust company within the state on trust for

a nonresident, notwithstanding that two of the cotrustees also reside without the state.

(2) An apportionment was correctly made by the tax commission of the business done and the earnings of the foreign corporation whose stock was held in trust, and which did business within and without the state.

(3) "Income" is used in the common ordinary sense.

Case No. 223

Alderman v. Wells,

67 S. E. 781 (Sou. Car.) 1910. State Act of 1905.

(1) A graduated income tax does not take property without due process, nor deny equal protection of the laws.

(2) A graduated income tax is one in which some persons are totally exempt or partially exempt by reason of higher or graduated rates laid on greater incomes.

(3) It is not double taxation that corporate property be subjected to tax, and dividends are also required to be included in taxable income.

(4) A provision of the constitution, that an annual tax to defray each year's expenses shall be levied, is not infracted by the imposition of an income tax which is to extend beyond the year

(5) The title of an income tax law which recites that it is "to raise revenue for the support of the state government by the levy and collection of a tax on income" sufficiently complies with a constitutional provision that "no tax shall be levied except in pursuance of a law which shall distinctly state the object of the same to which object the tax shall be applied."

Case No. 224

Atwood v. Johnson,

175 N. W. 589 (Wisc.) 1919. State Act of 1919.

The legislature's powers of classification in enacting an income tax law are broad. "It is enough that there be no discrimination in favor of one as against another in the same class, and that the assessment and collection of tax is not inconsistent with natural justice. . . . Unless we can say that the exemptions are manifestly unjust, arbitrary or whimsical, courts have no power to interfere. . . . The fact that the surtax of the individual begins with the fourth thousand while that of corporations, joint-stock companies or associations begins with the first one thousand does not make the exemption arbitrary or whimsical. . . ."

Case No. 225

Brushraber v. Union Pacific Ry. Company,

240 U. S. 1 (1916). Act of 1913.

(1) With proper averments a stockholder's suit to restrain a corporation from voluntarily paying a tax charged to be unconstitutional is not in violation of R. S. 3224.

(2) The Sixteenth Amendment did not enlarge the power of taxation, but only removed the limitation theretofore imposed as to the levy of direct taxes.

(3) The uniformity clause in the Federal Constitution relates only to geographical uniformity.

(4) The Fifth Amendment to the Federal Constitution is not a limitation on the taxing power.

(5) Congress may levy progressive rates of income taxation.

Case No. 226

Campbell v. Shaw;
Honolulu Iron Works v. Shaw,
11 Haw. 112 (1897). Hawaiian Act of 1896.

An income tax law which exempts to the extent of \$2,000 all incomes less than \$4,000, but which allows no exemption to incomes of more than \$4,000 is unconstitutional in that it violates a constitutional provision that each member of society "shall be obliged to contribute his proportion or share to the expense of (his) protection."

Case No. 227

Commonwealth v. Werth,
82 S. E. 696 (Va.) 1914.

It is not invalid double taxation that a lawyer is compelled to pay an excise tax for the privilege of practicing his profession, and a tax on the income therefrom.

Case No. 228

Equitable Life Assur. Soc. v. Hart,
173 Pac. 1062 (1918). Mont. State Act of 1917.

(1) An excise tax on corporations measured by their net income is not invalid as double taxation, because there is already imposed a license tax on certain corporations of which plaintiff is one, nor is the earlier license tax act repealed by the general repealing clause in the later act.

(2) The Act is not invalid because it discriminates between corporations deriving all of their income from sources within the state, and those deriving only part therefrom.

(3) Nor is it an arbitrary discrimination to disallow foreign corporations to deduct taxes not imposed by the state, when determining net income.

Case No. 229

Flint v. Stone Tracy Company,

220 U. S. 107 (1910). Act of 1909.

(1) The Corporation Excise Tax Act of 1909 is constitutional.

(2) Joint-stock companies and associations are properly classified with corporations, since they enjoy much the same benefits.

(3) Where a direct tax may be void it is possible to reach nontaxable property by means of an excise tax measured by the income from that property.

(4) The exemption from Federal taxation of state agencies is confined to those agencies used for governmental purposes.

(5) It is no part of the essential governmental function of a state to provide transportation, light, water, etc., and therefore public service corporations operated for private gain are taxable; the true distinction is between those operations which are essential to the execution of government functions and which can only be carried on by the state itself and those which are of a private character.

Case No. 230

F. S. Royster Guano Company v. Commonwealth,

253 U. S. 412 (1920). Va. State Act of 1916.

A state income tax law which taxes all the income of domestic corporations doing business within and without the state, and exempts entirely from taxation domestic

corporations having incomes only from sources without the state is arbitrary and violates the equal protection clause of the Fourteenth Amendment of the Federal Constitution.

Dissenting opinion on the ground that the classification was reasonable.

Case No. 231

In re C. Brewer and Company, Ltd.,

23 Haw. 96 (1915). Hawaiian Act of 1915.

That insurance companies pay an excise tax measured by the gross amount of their earnings from risks in Hawaii and also an income tax on their net income which is in part made up from earnings from risks in Hawaii does not render the tax invalid on the ground of double taxation.

Case No. 232

Lott v. Hubbard,

44 Ala. 593 (1870). State Act.

(1) It is not objectionable as double taxation that a taxpayer is required to pay a tax on his income and also the real estate in which he has invested his income.

(2) Where a taxpayer refuses to make a return of his true net income, and the assessor makes a return thereof to the best of his knowledge, in the absence of statute, recovery may not be had of the difference between the amount collected and the amount which would have been payable on his true income had he made return thereof.

Case No. 233

Ludlow Saylor Wire Company v. Wollbrink,

205 S. W. 196 (Mo.) 1918. State Act of 1917.

(1) A tax on income is not a tax on property; therefore a constitutional provision that taxes must be laid according to value, which obviously refers to taxes on property as such, is not infringed by an act imposing income taxes.

(2) A constitutional provision that taxes shall be uniform on the same class of subjects is satisfied by a classification of persons according to their net incomes.

(3) It is within the same provision to enact that persons who have paid taxes on real or personal property shall be separately classified and treated, by allowing to such persons a credit equal to the amount of property taxes paid.

Case No. 234

Opinion of the Justices,

53 N. H. 635 (1865). State Act of 1865.

A statute providing for the taxation of incomes from notes, bonds and other securities not otherwise taxed under the laws of the state, is valid except so far as it purports to levy a tax on incomes from bonds of the United States.

Case No. 235

Opinion of the Justices,

108 N. E. 570 (Mass.) 1915.

(1) A tax on income is in reality a tax on the property from which it springs, and such a tax must be within

the constitutional provisions governing the taxation of property.

(2) The mere right to hold and own stocks of foreign corporations and stocks, bonds and like property which derive their value from property otherwise taxed cannot be made the subject of an excise tax.

(3) Even if it be constitutional to exempt from taxation stocks of foreign corporations, and stocks, bonds and like property which derive their value from property otherwise taxed, such exemption cannot be coupled with the condition that the income therefrom be subjected to tax at rates different from those applicable to personal property, for a tax upon income from property is a tax on the property itself and must be proportional with taxes on all other property.

Case No. 236

Peacock v. Pratt,

121 Fed. 772 (1903). Hawaiian Act of 1901.

(1) The exemption from income tax of schools, colleges and fraternal benefit societies is not an illegal discrimination.

(2) The Fourteenth Amendment does not prevent the imposition of an income tax.

(3) The exemption of insurance companies is not illegal where other kinds of taxation are levied on such companies and the exemption is made dependent on payment of the other taxes.

(4) An exemption of \$1,000 to individuals, and nothing to corporations, is not unreasonable.

(5) Failure to exempt judges' salaries, provision for unreasonable searches, etc., does not *ipso facto* vitiate the law, since the remainder of the law may stand, and

the question will be postponed until an actual case is brought up.

(6) The Hawaiian Income Tax Law of 1901 in valid.

Case No. 237

Pollock v. Farmers Loan and Trust Company,

157 U. S. 429 (1895). Act of 1894.

(1) A court of equity has jurisdiction to prevent a threatened breach of trust in the misapplication or diversion of the funds of a corporation by illegal payments out of its capital or profits.

(2) Direct taxes must be apportioned among the several states in accordance with numbers. Taxes on real estate are direct taxes and taxes on the rent or income of real estate, being substantially taxes on the real estate, are the same.

Case No. 238

Pollock v. Farmers Loan and Trust Company,

158 U. S. 601 (1895). Act of 1894.

(1) Taxes on real estate being indisputably direct taxes, taxes on the rents or income of real estate are equally direct taxes.

(2) Taxes on personal property, or on the income of personal property are likewise direct taxes.

(3) Unapportioned income taxes on the rents and income from real and personal estate being direct and therefore unconstitutional, the entire portion of the law dealing with income taxation, comprehending as it does one scheme of taxation, is necessarily invalid.

Case No. 239**Robertson v. Pratt,****13 Haw. 590 (1901). Hawaiian Act of 1901.**

(1) An income tax statute is not necessarily entirely void because it seeks to tax subjects beyond the constitutional limit of taxation.

(2) Classification not arbitrary is permissible in an income tax act.

(3) Individuals and corporations may be classed separately, and a \$1,000 exemption may be given to individuals and denied to corporations. Such exemption is not invalid as excessive, nor is it invalid as arbitrary where it is given to all families alike regardless of size.

(4) In estimating the income from sales of personal property a taxpayer may lawfully be permitted to omit products produced and consumed by himself and not sold.

(5) Foreign insurance companies may be put in a class by themselves and taxed on gross income.

Case No. 240**Savannah v. Hartridge,****8 Ga. 23 (1850). City Act of 1842.**

(1) A statute authorizing a municipality to levy "assessments upon all real and personal estate" does not authorize the levy of an income tax, income not being property within the meaning of the term.

(2) A real doubt in a taxing statute must be resolved in favor of the taxpayer.

Case No. 241

Shaffer v. Carter,

252 U. S. 37 (1920). Okla. State Act of 1915.

(1) Where the state laws provide that all of a taxpayer's property shall be subject to a lien to secure the payment of income taxes, and provide no means of removing said lien, a court of equity has jurisdiction of a bill to remove the lien, and having jurisdiction will settle all other issues raised concerning the tax or its validity.

(2) The constitutionality of a tax depends upon its practical operation and effect, and not on mere definitions or theoretical distinctions respecting its nature and quality; thus the privileges and immunities clause of the federal constitution is not violated because as to residents the income tax operates *in personam* while as to nonresidents it operates *in rem*, residents not being subject to a like tax *in rem*, if the tax is substantially the same in effect both on residents and nonresidents.

(3) The fact that nonresidents are allowed deductions only of losses within the state while residents are allowed deductions on account of all losses does not violate the privileges and immunities clause or the equal protection clause, residents being taxed on all income, and nonresidents only on income from within the state.

(4) A tax on net income is valid even though part of such income is made up of income from operations in interstate commerce.

(5) The state is justified in treating properties, consisting of oil producing land, oil and gas mining leaseholds, etc., of a person engaged in the production of oil and gas, as a single unit, and placing a lien thereon to secure payment of taxes on the income received therefrom; it is not necessary to decide, therefore, whether it is a denial of due

process of law for a state to lay a lien on the property of a nonresident taxpayer other than the property from which springs the income taxed in order to secure payment of income taxes owing.

Affirming 250 Fed. 873.

Case No. 242

Shaffer v. Howard,

250 Fed. 873 (D. C., E. D. Okla.) 1918. State Act of 1915.

(1) A tax upon income from a business is directed at neither the person who receives nor the property from which the income arises, but at the privilege of making, producing, etc., the income itself, and the right to lay such tax depends upon the protection of the person who receives or of the business which helps create that income.

(2) That a tax law subjects all of the property of a taxpayer to a lien until an assessment is satisfied is sufficient ground for the intervention of a court of equity to remove a cloud from title, the law providing no plain remedy to accomplish that end.

(3) Jurisdiction over property from which income arises, or over the person to whom it accrues, is sufficient basis for an income tax, and the former ground is none the less sufficient when property within the state is owned and managed by nonresidents from without the state, although it can be conceded that such ownership and management are important component factors in the production of the income.

Dissenting opinion filed, based on the ground that an income tax cannot at the same time be directed against persons and property; that if directed against persons it cannot reach nonresidents, and if directed against property in an amount measured by the income therefrom received

by nonresidents it is void because of unconstitutional discrimination against such nonresidents.

Affirmed 252 U. S. 37.

Case No. 243

Smith v. Dirckx,

223 S. W. 104 (Mo.) 1920. State Act of 1919.

(1) A constitutional provision that, "no *ex post facto* law, nor law impairing the obligation of contracts, or retrospective in its operation . . . can be passed by the General Assembly," operates to prevent the enforcement of an income tax law passed in May, 1919, purporting to increase the rate of tax on the entire year's income, so far as concerns income received between the first of the year and the date of the passage of the law.

Dissenting opinion on the ground that a year's income is a unit, the size of which cannot be known, or which cannot come into existence before the end of the year; therefore, any law taxing incomes is not retrospective if it is passed before December 31 of the year, the income of which is sought to be taxed.

Case No. 244

Springer v. United States,

102 U. S. 586 (1880). Act of 1865.

A tax on gains, profits and income (whether from real or personal property or from earnings not stated or discussed) is an excise or indirect tax and Congress need not therefore apportion such tax among the several states according to population.

Case No. 245**State ex rel. Bolens v. Frear,****134 N. W. 673 (Wisc.) 1912. State Act of 1911.**

(1) Taxation of income from property is not the same as taxation of the property itself, and therefore there is no double taxation by reason of a property tax on the capital and additional tax on the income.

(2) Estimated rental value of a residence may be taxed as income to the owner living therein.

(3) It is a valid exercise of the power of classification to provide that the income of husband, wife and children under eighteen years should be reported in one return and only one exemption allowed.

Case No. 246**State ex rel. Meyer Bros. Drug Company v. Koeln,****222 S. W. 389 (Mo.) 1920. State Act of 1917.**

A taxpayer whose income tax was assessed in March, 1919, who paid property taxes thereafter in the same year, and who paid his income tax in December, 1919, may not deduct from gross income to ascertain net income the amount of the personal taxes paid when the section of the law allowing such deduction was repealed before the personal property taxes were assessed, since no right became vested in the taxpayer before that time.

Case No. 247

State v. Pinder,

108 Atl. 43 (Del.) 1919. State Act, Chap. 26, Vol. 29.

(1) "Income" is property within the meaning of the Delaware Constitution; therefore, authorization of property taxes includes authorization of income taxes.

(2) The law is not void because of want of uniformity when it provides for the exemption of incomes under \$1,000, of state salaries, of real estate rentals, and farmers' incomes, because the exemption is not of classes of persons but of property, which is allowed by the Constitution.

(3) The law does not violate the Fourteenth Amendment.

Case No. 248

State ex rel. Wickham v. Nygaard,

150 N. W. 513 (Wisc.) 1915. State Act of 1913.

Although the Wisconsin Constitution forbade the diminution or increase of the compensation of any public officer during his term of office, the amendment thereto allowing graduated taxes on "incomes" was sufficiently broad to allow of the imposition of a state income tax with respect to the salary received by a state judge.

Case No. 249

State Tax on Foreign-Held Bonds,

82 U. S. 300 (1872). Penn. Act of 1868.

A state may not tax the interest on bonds of domestic corporations issued before passage of the taxing law, secured by mortgage on property within the state, but actually held by persons residing outside the state at the

place of their residence, when the state courts have determined that a mortgage is merely a chose in action, conveying no property right to the mortgagee in the property mortgaged, because the state is without jurisdiction of the property sought to be taxed or of the owner thereof, and any assertion of a so-called tax in these circumstances amounts to an impairment of the obligation of a contract, notwithstanding that the highest courts of the state concerned have held the tax to be valid.

Dissenting opinion filed on the ground that the Supreme Court is without jurisdiction because no constitutional or federal question was presented.

Case No. 250

Towne Manufacturing Company v. Travis,

D. C., S. D. N. Y., Judge Knox, 1919. N. Y. State Act of 1919.

The provisions of the state income tax law are invalid and unconstitutional "in so far as they attempt to assess, lay and collect a tax upon citizens of the United States who are not residents of the State of New York, and who are citizens of other states, without according them the privileges and immunities afforded by said citizens of the State of New York and residents therein," and thus a law which denies to citizens of other states exemptions equivalent to those granted citizens of the enacting state is invalid.

Affirmed 252 U. S. 60.

Case No. 251

Travis v. Yale and Towne Manufacturing Company,
252 U. S. 60 (1920). New York State Act of 1919.

(1) A state may levy an income tax on income of non-residents arising from sources within the state, and there is no unconstitutional discrimination in confining the deductions allowable to nonresidents to expenses, losses, etc., connected with the income taxed, although residents may deduct all expenses, losses, etc., but are taxed on all income.

(2) Employers of nonresidents may constitutionally be required to withhold taxes due from them on account of salaries paid them, even though such requirement is omitted in the case of residents.

(3) It is constitutional to apply the withholding requirement to a nonresident corporation doing business within the state.

(4) A discrimination against nonresidents of a state necessarily discriminates against those who are citizens of other states.

(5) A state income tax levied generally on incomes of residents and nonresidents abridges the privileges and immunities clause of the federal constitution if it allows to residents fixed exemptions on account of marital status and dependents but disallows such exemptions to non-residents, and the infirmity is not cured by an allowance to nonresidents of an exemption in amount equal to a portion of income tax they may have paid to the state of which they are citizens, or a provision excluding from taxable income of nonresidents annuities, dividends and interest from within the state not from a business, etc., subject to tax.

(6) A violation of the privileges and immunities of

citizens of other states cannot be condoned by those states or cured by retaliation.

Case No. 252

**Tyee Realty Company v. Anderson;
Thorne v. Anderson,**

240 U. S. 115 (1916). Act of 1913.

(1) The Act considered was not beyond the authority conferred on Congress by the Sixteenth Amendment.

(2) The Act was not void because of retroactive operation for a designated time, or because of alleged discriminations which it created, including the provision for a progressive tax on individuals' incomes and the method provided in the statute for computing the taxable income of corporations.

Case No. 253

United States v. Erie Ry. Company,

Fed. Cas. 15056 (D. C., S. D. N. Y.) 1877. Act of 1866.

(1) An income tax may not be laid by Congress which will reach the income received by nonresident aliens on bonds secured by property within the United States, when both the person and the bonds are outside of the jurisdiction of the United States.

Reversed 106 U. S. 327 (on ground tax was an excise on domestic corporation); rehearing denied 107 U. S. 1.

Case No. 254

United States Glue Company v. Oak Creek,
247 U. S. 321 (1918). Wisc. Act of 1911.

A tax upon net income is not void as an unconstitutional regulation of interstate commerce where part of the income taxed arises from such commerce, provided no discrimination against such income as compared with other income is made, for such a tax constitutes one of the ordinary and necessary burdens of government from which there can be no escape because one happens to be engaged in interstate commerce.

Affirming 153 N. W. 241.

Case No. 255

Baldwin Tool Works v. Blue,
240 Fed. 202 (1916). State Act of 1915.

(1) A state act imposing an excise tax on corporations for the privilege of doing business, based on net income from business done within the state is not unconstitutional as imposing a burden on interstate commerce, nor as depriving of equal protection of the laws.

(2) It is not invalid because of double taxation when the corporations affected are also required to pay a franchise tax.

(3) The federal courts will not enjoin the collection of a state tax where an adequate and complete remedy is provided by statute.

Case No. 256

Peck v. Lowe,

234 Fed. 125 (D. C., S. D. N. Y.) 1916. Act of 1913.

Since taxation which precedes exportation is valid, it must be that taxation which follows exportation is likewise not invalid as a tax on exports. The constitutional inhibition begins with the act of exportation and must end with its completion. After export, profits come, and taxes with them.

Affirmed 247 U. S. 165.

Case No. 257

Peck v. Lowe,

247 U. S. 165 (1918). Act of 1913.

(1) The Sixteenth Amendment does not extend the power of taxation to new and excepted subjects but merely removes the necessity for apportionment.

(2) A tax upon profits derived from the exportation of goods is valid, exportation being affected only indirectly and remotely, and the tax being levied after exportation is completed and all expenses are paid and losses adjusted.

Affirming 234 Fed. 125.

Case No. 258

Superior v. Allouez Bay Dock Company,

164 N. W. 362 (Wisc.) 1917. State Act of 1915.

An income tax is not a tax on interstate commerce though levied against a corporation which derives its entire income from interstate commerce business, because an income tax is not a tax on property; thus, though

it is measured by the receipts from business, it is not a tax on business.

Case No. 259

Collector v. Day,

78 U. S. 113 (1870). Civil War Acts.

A state is as sovereign and independent as the general government, and since the former may not embarrass the latter by taxation, the converse must also be true, and the means and instrumentalities for carrying into effect the powers reserved by the constitution to the states and the people are therefore free from taxation. Thus, the general government may not levy an income tax on the salary of a state judicial officer.

Case No. 260

Evans v. Gore,

262 Fed. 550 (D. C., W. D. Ken.) 1919. Act of 1918.

A tax upon the incomes of all citizens, and which does not discriminate against judges of the United States, is not invalid as contravening Article 3, Section 1 of the constitution, providing that judges' compensations "shall not be diminished during their continuance in office," since such a tax is a personal tax and "is nothing other than the requiring of the judge his fair share of the burden."

Reversed 253 U. S. 245.

Case No. 261

Evans v. Gore,

253 U. S. 245 (1920). Act of 1920.

(1) Congress has no power to levy income taxes with reference to judicial salaries, although the incomes of judges from sources other than salaries as such are taxable.

(2) The sixteenth amendment was of no effect beyond removing the necessity for apportionment among the several states of income tax levies.

Reversing 262 Fed. 550.

Case No. 262

Freedman v. Sigel,

Fed. Cas. 5080 (Circ. Ct., S. D. N. Y.) 1873. Civil War Acts.

The federal government cannot tax the salary of a justice of the Superior Court of the city of New York, even though his salary is payable out of the treasury of the city and not out of the state treasury, and the salary was fixed by a board of supervisors and not by a state statute, on the authority of *Collector v. Day*, 11 Wall. 113.

Case No. 263

In re Taxation of Salaries of Judges,

42 S. E. 970 (N. C.) 1902. State Act.

A constitutional provision that "the salaries of judges shall not be diminished during their continuance in office" prevents the imposition of an income tax on the salaries of judges of the Supreme Court of the State during their tenure in office.

Case No. 264**Letter from Justice Taney to Secretary of the Treasury
Chase,****157 U. S. 701 (1863). Act of 1862.**

Congress is forbidden by that section of the constitution preventing the diminution of salaries of judges in office from including within the purview of an income tax statute salaries of judges of United States courts during their tenure as such, and collection from such judges of an income tax on their salaries for judicial services by the Treasury Department is unconstitutional.

Case No. 265**New Orleans v. Lea,****14 La. Ann. 197 (1859). Local Act of 1858.**

The provisions of a state constitution that judges "shall at stated times receive a salary which shall not be diminished during their continuance in office" prevents the application of an income tax to such salaries.

Case No. 266**13 Opinion Attorney General, 161,****Rendered by E. R. Hoar, October 23, 1869.**

(1) The Civil War income tax acts are unconstitutional in so far as they attempt to levy a tax on salaries of federal judges and the President.

(2) It would not be unconstitutional to tax the salaries of officers taking office after the passage of the Act. However, the presumption is against the intention to impose such a tax, since it would, in the case of the President, be

forbidden to remove the tax while he was in office, and it would result in inequalities of taxation as between judges.

Case No. 266 A

Opinion Attorney General

T. D. 3049, rendered by A. Mitchell Palmer, 1920. Act of 1918.

The compensation of a judge of the Supreme Court or of an inferior court of the United States is subject to income tax imposed by a statute enacted before his term of office begins.

Case No. 267

31 Opinion Attorney General, 475,

Rendered by A. Mitchell Palmer, May 6, 1919. Act of 1918.

The imposition of a general income tax is not a reduction of salaries when applied to all citizens of the same class, and does not therefore fall within the provision of the constitution preventing the increase or diminution of salaries of the President or federal judges; the incomes of such officers on account of their official duties are therefore taxable.

Case No. 268

Purnell v. Page,

45 S. E. 534 (N. C.) 1903. State Act.

(1) A state may not constitutionally impose an income tax on income paid for services to a United States judge.

(2) An income tax is not a property tax "but is a percentage laid on the amount which a man receives."

(3) An officer of the Federal Government is taxable *ad valorem* on the amount of cash on hand on taxing day,

whether or not such is received as payment for services rendered to the Federal Government.

Case No. 269

**Biscoe v. Tax Commissioners;
Blackman v. Tax Commissioners,
128 N. E. 16 (Mass.) 1920. State Act of 1916.**

The compensations received by a vice president and assistant counsel of a railway company who were appointed by the Federal Railroad Administration to serve in similar positions while the railroad was operated by the Federal Administration are not taxable under a state income tax act.

Case No. 270

**Dobbins v. Commissioners,
14 U. S. 435 (1842).**

(1) A state law (of Penn.) levying a tax on "all offices and posts of profit" is not operative in respect to an office held under the United States (a) because it would hinder the general government in carrying out the duties and rights secured by the Constitution; (b) would give to the states national revenue contrary to law; (c) would in effect interfere with the operation of a law of Congress fixing the salaries of United States officers.

(2) A tax is not a charge paid for protection of laws, nor is it a personal charge. It is a duty to pay levied upon persons by reason of the goods they own, to enable the state to support itself.

Case No. 271

Melcher v. City of Boston,
50 Mass. 73 (1845). State Act.

(1) A clerk in a federal post office is not an officer of the United States in such sense as to exempt him from state income taxes otherwise collectible with reference to the compensation derived by him from the United States for the performance of his duties.

(2) *Quære* whether a resident of Massachusetts is not by virtue of such residence liable to pay income tax with reference to all of his income, no matter from what source derived.

Case No. 272

13 Opinion Attorney General, 67,
Rendered by E. R. Hoar, 1869. Acts of 1864, 1866 and 1867.

The tax required by the Acts of 1864, 1866 and 1867 to be withheld from all payments of interest is a tax upon the creditor, and when that creditor is a municipality loaning money to a private corporation the tax is not to be asserted unless the Acts are specific, for assuming that the loan is not made by the municipality in furtherance of a governmental activity, still the difficulty of separating governmental from nongovernmental functions gives rise to a presumption against an intention on the part of Congress to burden municipalities with such tax.

See 84 U. S. 322.

Case No. 273**13 Opinion Attorney General, 439,****Rendered by A. T. Akerman, 1871. Civil War Acts.**

(1) A tax generally against dividends of a private corporation is not operative against dividends on shares of stock owned by a state.

(2) The Commissioner is authorized, not compelled, to refund taxes erroneously collected, but representing a government that abhors injustice, he should do so in all cases except where the fault of the taxpayer or the waiver of his rights or his long acquiescence or other sufficient circumstances discredit the claim.

Case No. 274**30 Opinion Attorney General, 252,****Rendered by J. C. McReynolds, 1914. Act of 1913.**

Special assessment districts, when lawfully created under the authority of the states for the purpose of improvement of streets and public highways, the provision of sewerage, gas and light and the reclamation, drainage, or irrigation of considerable bodies of land within the states, are "political subdivisions" thereof within the meaning of the Act.

Case No. 275**31 Opinion Attorney General, 441,****Rendered by A. Mitchell Palmer, May 6, 1919. Act of 1918.**

The salaries and wages of state officers and employees cannot be constitutionally taxed by the federal govern-

ment, and the Act of 1918 should not therefore be construed to include them.

Case No. 276

United States v. Railroad Company,

84 U. S. 322 (1872). Act of 1864.

(1) The section of the Act of 1864 which provided that certain corporations indebted upon bonds should pay a tax of 5% with respect to such interest, and deduct the amount from interest due the bondholder was a tax on the bondholder imposed through the agency of the corporation.

(2) The city of Baltimore is an arm of the state and while acting in a sovereign capacity is entitled to the same exemptions. Thus, it was not subject to the tax described when it had invested in railroad bonds, the success of the railroad presumably redounding to the benefit of the city and its people. But if the city should be made a trustee to receive funds and distribute them to relieve the poor, aid science and literature, etc., "it is quite possible" that such revenues would be subject to taxation.

Case No. 277

United States v. Ritchie,

27 Fed. Cas. 16168 (D. C. Md.) 1872. Civil War Acts.

(1) The salary of a state's attorney is exempt from federal income tax.

(2) The federal government may not apply the specific exemption allowed generally to individuals under a taxing act against exempt income as that in effect deprives per-

sons receiving exempted income of the exemption to which they are entitled.

Case No. 278

Conn. General Insurance Company v. Eaton,

218 Fed. 188 (D. C. Conn.) 1914. Act of 1909.

(1) A stock life insurance company with a mutual department, which collects premiums in advance, but repays at the end of the year either in cash or credit, the difference between the cost of the insurance and the amount first paid, may exclude from gross income under the Act of 1909 the amount so returned in cash or credited to the policy holder. Such excess premium paid or credited to the policy holder is not a dividend within the meaning of the Act.

(2) Such a company owning bonds which it has purchased at a discount and premium may deduct the amortized value theoretically subtracted each year from the bonds purchased at a premium if it makes a corresponding addition in the case of bonds purchased at a discount.

(3) It need not take into income amounts representing deferred premiums and interest thereon since their value is uncertain.

Affirmed 223 Fed. 1022.

Case No. 279

Conn. Mutual Life Insurance Company v. Eaton,

218 Fed. 206 (D. C. Conn.) 1914. Act of 1909.

(1) A stock life insurance company with a mutual department, which collects premiums in advance, but repays at the end of the year either in cash or credit, the difference between the cost of the insurance and the amount first paid, may exclude from gross income under

the Act of 1909 the amount so returned in cash or credited to the policy holder. Such excess premium paid or credited to the policy holder is not a dividend within the meaning of the Act.

(2) Disbursements for furniture, fixtures, safes, etc., which do not enhance the value of the property but merely facilitate business and rearrange the layout are deductible.

(3) It need not take into income amounts representing deferred premiums and interest thereon since their value is uncertain.

(4) All losses on sales of real estate are deductible, although there might, if the company is a stock company, be some question whether profits from such sales would be income or capital increment.

Affirmed 223 Fed. 1022.

Case No. 280

**Eaton v. Conn. General Life Insurance Company;
Eaton v. Conn. Mutual Life Insurance Company,
223 Fed. 1022 (1915). Act of 1909.**

The excess of premiums paid by mutual life insurance policyholders to the insurance company over the cost of the insurance, and by the company credited back to the policy holders who apply it to the purchase of additional insurance or to other purposes, is not "dividends" but abatement of premium and does not furnish the basis for taxation of the insurance company.

Affirming 218 Fed. 188 and 218 Fed. 206.

Case No. 281

Fink v. Northwestern Mutual Life Insurance Company,
267 Fed. 968 (C. C. A., 7th Circ.) 1920. Act of 1909.

(1) The excess of premiums paid by mutual policy holders over the cost of the insurance, which was set aside for the policy holders by the company and by them applied to the purchase of additional insurance or as part payment of further premiums owing, is not income of the company for the year when so applied, such excess having already been taxed when first received by the company, unless received before the passage of the Act, in which case it is tax-free.

(2) Accrued interest and premiums are not income until received.

(3) Amortization of bonds purchased at a premium, due to approaching maturity is not an allowable deduction, and is not included within the term "depreciation."

(4) A net addition to a reserve to secure payment of the amount of a matured policy is not deductible where such addition is offset by a decrease in the reserve set aside in anticipation of the maturity of the policy.

Modifying 248 Fed. 568.

Case No. 282

Herold v. Mutual Benefit Life Insurance Company,
201 Fed. 918 (C. C. A., 3d Circ.) 1913. Act of 1909.

(1) So-called dividends paid annually to policy holders by a mutual life insurance company doing business on the level premium plan which arise from the excess of premiums collected during previous years over actual ascertained requirements are not taxable as part of the company's "net income received by it during such year"

under the Act of 1909, having been taxed once as a part of the income of the year received.

(2) If Congress meant to tax such dividends more than once, "it is well settled that the language imposing such an exceptional burden should be clear and unambiguous."

Affirming 198 Fed. 199; certiorari denied 231 U. S. 755.

Case No. 283

Insurance Company of North America v. McCoach,

218 Fed. 905 (D. C., E. D. Penn.) 1914. Act of 1909.

(1) Interest accrued on unmatured interest coupons need not be accounted as income under the 1909 Act.

(2) The phrase "the net addition if any required by law to be made to reserve funds," describing a deduction allowed to insurance companies under the Act of 1909 means "that when a company is so situated that a part of its yearly net income is not available for corporate use but is required to be set aside and placed beyond the reach of the company as absolutely as if it has been paid away, then it may be deducted as if it had been so paid, but not otherwise." Thus where a company with a surplus of \$4,000,000 and a reserve of \$202,404 sustains a loss of \$88,600, there is no occasion to add that sum to the reserve, since the loss would be chargeable against the surplus and would not therefore decrease the reserve.

Reversed 224 Fed. 657; affirmed 244 U. S. 585.

Case No. 284

Insurance Company of North America v. McCoach,
224 Fed. 657 (C. C. A., 3d Circ.). Act of 1909.

(1) "Reserves required by law" additions to which are an authorized deduction include reserves for unpaid losses and claims, adjusted or unadjusted, required by a state insurance commissioner acting under statutory authority, as well as reinsurance reserves specifically required by statute.

(2) It is immaterial that the corporation have a large surplus, and the deduction on account of additions to reserves must be allowed if the outstanding claims against the company are so great as to require an addition to the appropriate reserve, notwithstanding that the charge ordinarily would when ascertained be made against surplus.

Dissenting opinion on the ground that unpaid claim reserves are required by state authorities only for the purpose of enabling the Commissioner of Insurance to determine whether the corporation is solvent, and whether it should be allowed to continue business; such reserves are not therefore within the purview of the law.

Reversing 218 Fed. 905; reversed 244 U. S. 585.

Case No. 285

Jewelers Safety Fund Society v. Lowe,
T. D. 3078 (D. C., S. D. N. Y.) 1920. Acts of 1909 and 1913.

(1) The premium receipts of a mutual trade society, organized for the purpose of affording protection to its members from loss of property by fire, theft, barratry and transportation risks are part of its income whether in the form of deposits or otherwise.

(2) Interest on bank deposits and from investment of premium deposits are likewise to be included in income, for these are profits to the insurance society; furthermore, the society may well be termed a fire insurance company and the items mentioned are specifically declared by the act to be income of such companies.

Case No. 286

Lederer v. Penn. Mutual Life Insurance Company,

258 Fed. 81 (C. C. A., 3d Circ.) 1919. Act of 1913.

(1) The provision that "life insurance companies shall not include as income in any year such portion of any actual premium received from any individual policy holder as shall have been paid back or credited to such individual policy holder or treated as an abatement of premium of such individual policy holder within such year" requires each policy holder to be treated separately and allows a company to exclude from its income of any year only such excess over the cost of insurance as shall have actually been paid or credited to a policy holder who has during such year paid premiums to the company and may not exclude greater amounts with respect to any policy holder than the sum he has paid.

(2) Since the sums so paid back or credited are excluded from gross income, no further deduction is allowable as "sums other than dividends paid within the year on policy and annuity contracts."

(3) It is immaterial to allowance of the benefit that the redundancy paid back or credited is in part made up of forfeitures or comes from any other source, except that interest on such redundancy may not be excluded or deducted from gross income because the interest is in

fact a "dividend," being part of the earnings of the company, and the deduction thereof is specifically forbidden in the clause allowing deduction of "sums other than dividends" paid on policy contracts.

(4) A policy providing for payment on the death of the insured to the beneficiary of the face of the policy in installments, with interest, enables the company to deduct from gross income not only the principal amounts paid the beneficiary, but the interest thereon as well, as "sums other than dividends paid within the year on policy and annuity contracts."

Reversing 247 Fed. 559; reversal affirmed 252 U. S. 523.

Case No. 287

Lumber Mutual Fire Insurance Company v. Malley,

256 Fed. 380 (D. C. Mass.) 1916. Act of 1909.

(1) The Act of 1909 contemplated a cash basis of income; therefore only premiums actually paid within the year are taxable income.

(2) No taxable income arose to the insurance company where a policy holder, instead of taking in cash the "dividend" due him elected to apply it to a new contract of insurance.

(3) If a party plaintiff abandons his claim as to a deduction during trial, the court will not take further notice of it; thus, where the plaintiff claimed the right to deduct the amount of returned premiums actually paid, and abandoned, during trial, his claim, the court will not further notice it, although (it seems) the court would have ruled favorably to the plaintiff if the claim had been pressed.

(4) Following the expressed opinion of both counsel, the plaintiff may recover from the defendant collector an

illegally exacted tax even though it was not paid to him, but to his predecessor in office.

Case No. 288

Maryland Casualty Company v. United States,

52 Ct. Cls. 201 (1917). Act of 1909.

(1) The Act of 1909 contemplates returns of income on a cash receipts and disbursements basis.

(2) Payment to an insurance company's agent is payment to the company and such payments must be accounted in the year of receipt by the agent.

(3) "Reserve funds required by law" as used in the Act excludes reserves set up for ordinary operating expenses, such as may be suggested by business prudence.

(4) The net decrease in reserve funds, additions to which are allowed as a deduction is income.

Affirmed 251 U. S. 342.

Case No. 289

Maryland Casualty Company v. United States,

251 U. S. 342 (1920). Acts of 1909 and 1913.

(1) So far as concerns corporations, the Acts of 1909 and 1913 have to do only with income *received*; but where payment of funds to a company agent works a full discharge of debts owing to the company, and the funds are subject to draft by the company any time after payment to the agent, all of such funds should be included in the company's gross income, as received by it in the year of such payment to the agent, whether or not they have been transmitted to the home office in such year.

(2) Deductions authorized to insurance companies on

account of the "net addition, if any, required by law to be made within the year to reserve funds" are allowable only with respect to additions to such reserves as are commonly recognized as pertaining to insurance law; additions to reserves to provide for the ordinary running expenses of a business, definite in amount, and payable currently, such as taxes, salaries, etc., are not deductible.

(3) The condition that such reserves must be "required by law" is met if the requirement is made by a State Department of Insurance acting in pursuance of competent statutory authority.

(4) A decrease in reserves, the net addition to which is deductible from gross income when computing net income, is to be included in gross income of the year of the decrease, provided such decrease results in an increase in the assets of the corporation available for its free beneficial use in a real and not a mere bookkeeping sense.

(5) The right to sue for the recovery of taxes is barred by R. S. 3226 if an appeal to the Commissioner is not first prosecuted, as well as by R. S. 3227 if suit is not instituted within two years from the accrual of the cause of action, and it is immaterial, so far as suit to recover taxes paid under original returns is concerned, that the government has filed amendments of the original returns rendered by the taxpayer increasing the tax and that the suit against the government is not barred as to such amended returns, for when such amendments increase the amount of tax originally paid they stand separately as new assessments.

Affirming 52 Ct. Cls. 201.

Case No. 290

McCoach v. Insurance Company of North America,
244 U. S. 585 (1917). Act of 1909.

The amounts of accrued, but unpaid, losses which the state insurance commissioner of Pennsylvania, acting under competent statutory authority, requires to be listed each year as liabilities, are not "reserve funds required by law," additions to which are deductible from gross income when ascertaining net income of insurance companies.

Affirming 218 Fed. 905, and reversing 224 Fed. 657.

Case No. 291

Mutual Benefit Life Insurance Company v. Herold,
198 Fed. 199 (D. C. N. J.) 1913. Act of 1909.

(1) The term "dividends" as used in the act refers to distributions made by ordinary corporations and not to the excess over the cost of insurance paid in by holders of mutual insurance policies and returned annually to them, and such excess is not taxable as profits or income of the company, even where the resulting credit to the policy holder is used by him to cut down his premium payment or purchase additional insurance.

(2) Additions, required by state commissioners of insurance, to reserves against unpaid amounts due to beneficiaries on policies that had matured but were unpaid because the beneficiary availed himself of an option to have the amount of the policy paid in installments, are deductible from gross income when computing net income.

(3) Uncollected and deferred premiums, and interest, are not income until received within the meaning of the

Act, since the Act contemplates returns on a cash, as distinguished from an accrual, basis.

(4) An ordinary expenditure for renewal of office equipment, even to considerable amount, is deductible from gross income as a current expense, since it does not result in an addition to assets.

Affirmed 201 Fed. 918; certiorari denied 231 U. S. 755.

Case No. 292

National Life and Accident Insurance Company v. Craig,
251 Fed. 524 (C. C. A., 6th Circ.) 1918. Act of 1909.

(1) "Net addition . . . required by law to be made within the year to reserve funds" allowed as a deduction to insurance companies is to be read in the light of insurance terminology and comprehends only such reserves as are required by law and as are peculiar to insurance companies; thus, additions to reserve funds required by a state insurance commissioner to be maintained to meet contingent losses, salaries, rents, etc., while conservative business, are not deductible.

Case No. 293

New York Life Insurance Company v. Anderson,
262 Fed. 215 (D. C., S. D. N. Y.) 1919. Act of 1909.

(1) Where insurance companies are required by law to repay to their policy holders by way of cash or credit certain parts of their profits, a deduction of such repayment is allowable when computing net income.

(2) Depreciation, as used in the Act of 1909 does not include fluctuation on bonds, since the word implies reduction in value due to wear and tear only.

Modified 263 Fed. 527.

Case No. 294

Northwestern Mutual Life Insurance Company v. Fink,
248 Fed. 568 (D. C., E. D. Wisc.) 1917. Act of 1909.

(1) So-called dividends of a mutual insurance company paid to its policy holders, representing the difference between the cost of insurance and amounts paid to the company by its policy holders, are not to be included in the company's net income.

(2) Premium and interest items accrued and due, but unpaid should not be included in income, under the Act of 1909.

(3) The net addition to a reserve maintained in anticipation of the payment of installment payment life policies, the insured being deceased, is deductible, when the state law requires the insurance commissioner to make "valuations of all outstanding policies, additions thereto and other obligations" for the purpose of fixing reserves, and the reserve mentioned may be classed as an insurance reserve.

(4) Section 3225, R. S., providing that in the case of a second assessment on a list which in the opinion of the collector was false or fraudulent or contained any understatement or undervaluation, no tax collected shall be recovered by suit unless it be proved that the list or return was not false or fraudulent and did not contain any understatement or undervaluation, merely raises a presumption as to the validity of the collector's opinion, and does not operate to prevent the recovery of tax unlawfully collected where the understatement or undervaluation was innocent and made in the exercise of honest judgment.

Modified 267 Fed. 968.

Case No. 295

Penn Mutual Life Insurance Company v. Lederer,

247 Fed. 559 (D. C., E. D. Pa.) 1918. Act of 1913.

(1) The sense in which tax laws are strictly to be construed is that no tax can be imposed by courts or the executive through judicial or administrative construction, since the people and they only can impose taxes, acting through the legislature.

(2) Section 2 (G) (b) providing that mutual life insurance companies shall not include as income in any year such portion of any actual premium received as shall have been paid back or credited within such year means:

- (a) The gross income is to be reduced by the amount of premiums returned if previously received no matter whether received before or during the taxable year, or
- (b) whether received before or after the effective date of the Act.
- (c) The deduction allowed includes not only the premium paid but the accretions thereto, while held by the company.

Reversed 258 Fed. 81; reversal affirmed 252 U. S. 523.

Case No. 296

Lederer v. Penn Mutual Life Insurance Company,

252 U. S. 523 (1920). Act of 1913.

The provision that life insurance companies "shall not include as income in any year such portion of any actual premium received from any individual policy holder as shall have been paid back or credited to such individual

policy holder, or treated as an abatement of premium of such individual policy holder within such year," does not allow such a company when computing income subject to tax to subtract from the total of gross premiums received during the year the total of repayments or credits to policy holders, but simply means that in computing income such portion of the gross premiums "which, although entered on the books as received, was not actually received, within the year, because the full premium was, by means of the dividend, either reduced, or otherwise wiped out to that extent," shall be excluded from gross income.

Affirming 258 Fed. 81.

Case No. 297

Prudential Insurance Company v. Herold,

247 Fed. 681 (D. C. N. J.) 1918. Act of 1909.

(1) A joint-stock company which writes participating and nonparticipating life policies need not include as income amounts returned by way of "dividends" to any of its policy holders as excessively charged, for even if any distinction is to be drawn between dividends on participating and nonparticipating policies (the question as to dividends on participating policies having been settled by *Mutual Benefit Life Insurance Company v. Herold*, 201 Fed. 918) it is certain the nonparticipating policy "dividends did not arise from income received during the tax years."

(2) Additions to a reserve, required by a State Commissioner of Insurance, for all business written, including that on which premiums had not been paid are deductible as a "net addition . . . required by law to be made within the year to reserve funds," where the state law vests in the

Commissioner authority to regulate insurance business done within the state.

Case No. 298

Crocker v. Malley,

250 Fed. 817 (C. C. A., 1st Circ.) 1918. Act of 1913.

(1) The Act of 1913 imposes an income tax on associations, whether or not they derive any benefit from laws permitting such organization or whether there are such laws, for since the tax is not an excise tax, it is not necessary that there be any privilege given.

(2) The Act of 1913 recognizes only two broad classes of persons subject to taxation, viz., individuals and groups. Income received by trustees on property committed to their care and management upon trust to distribute the proceeds at such time as they might deem wise cannot be said to accrue to the individual beneficiaries. The trustees, however, compose an association within the ordinary meaning of the word and the income is taxable to them as such.

Upon rehearing it was said that the language used was not to be construed as defining or limiting the term "individuals," presumably recognizing that fiduciaries might be taxable as such.

Reversed 249 U. S. 223.

Case No. 299

Crocker v. Malley,

249 U. S. 223 (1919). Act of 1913.

A declaration of trust, under which trustees are to hold property for the beneficiaries, collecting and distributing the income therefrom in their discretion, they being subject to no control by the beneficiaries, except that their

compensation could be changed, a vacancy could be filled and the terms of the trust modified upon the written consent of a majority in interest, did not bring into being a joint-stock association for income tax purposes, whether the trustees be regarded separately from the others, the beneficiaries be grouped together, or whether both classes be considered as one, since to do so would be a perversion of a well-known institution of the law.

Reversing 250 Fed. 817.

Case No. 300

Eliot v. Freeman,

220 U. S. 178 (1910). Act of 1909.

The Act of 1909 levies taxes only on such joint-stock companies and associations as were organized under the law of some state or the United States; therefore Massachusetts common-law trusts were exempt, since they derived their existence not from statute but from common law.

Case No. 301

Haiku Sugar Company v. Johnstone,

249 Fed. 103 (C. C. A., 9th Circ.) 1918. Act of 1913.

(1) A joint-stock company ordinarily consists of a large number of persons between whom there is no special relationship of confidence, while a partnership is generally made up of a few, and no member is at liberty to retire and substitute another as in a joint-stock association. In a joint-stock company the business is generally managed by a board of directors, while in a partnership any member may bind the firm. Where a corporation is a partner the doctrine of mutual agency may make administration more difficult, but this does not affect the

legal question. Thus where two or more corporations express an intention to form a partnership, legally valid under the local law, that intention is not to be defeated because the management is vested in a board of directors and shares of interest are distributed to the member-corporations, since these are only incidents of the corporations' rights to form a partnership, and the entity is not to be treated as a joint-stock corporation.

(2) In the interpretation of taxing statutes, they must not be extended beyond the clear import of the language used, and doubts are to be construed most strongly against the government.

Case No. 302

United States v. Coulby,

251 Fed. 982 (D. C. N. D. Ohio) 1918. Act of 1913.

(1) A partnership has no separate existence for the purposes of the Act of 1913; therefore, partners making individual returns may exclude from income subject to normal tax a proportionate part of dividends received by the partnership from stock of corporations themselves subject to tax.

(2) The express declaration to this effect contained in the Act of 1916 was a confirmation of the true interpretation of the Act of 1913.

(3) Doubtful language must be construed most strongly against the government.

Affirmed 258 Fed. 27.

Case No. 303

United States v. Coulby,

258 Fed. 27 (C. C. A., 6th Circ.) 1919. Act of 1913.

(1) The statement that a partnership has no legal existence apart from the members who compose it is too broad unless confined to the subject discussed by the District Court (federal income taxation).

(2) The language of the Act is of such doubtful import as to require construction against the government.

Affirming 251 Fed. 982.

Case No. 304

Cadwalader v. Lederer,

D. C., E. D. Pa., 1920. Act of 1917.

Whether or not a man has more than one trade or business is a question of fact for a jury; thus whether or not the income received by a lawyer from executor's fees or commissions is received by him from practicing his profession and is to be thrown in with his other income when determining the amount of his excess profits tax is to be decided by a jury.

Case No. 305

Cartier & Holland v. Doyle,

T. D. 3080 (D. C., W. D. Mich.) 1920. Act of 1917.

(1) A copartnership engaged in buying, selling and dealing in timber and like products is not a "trade or business having no invested capital or not more than a nominal capital" where the funds used in carrying on business were borrowed upon the security of collateral loaned to the firm by the members thereof, for although the

statute excludes "borrowed capital," including capital borrowed solely on the firm's credit, from "invested capital," the property pledged to the banks was a part of the working capital, and is "invested capital."

(2) Whether money borrowed on the notes of the firm indorsed by the individual partners and largely upon their credit is "invested capital" of the firm is not determined.

Case No. 306

Delasky and Thropp Circular Woven Tire Company v. Iredell,

268 Fed. 377 (D. C. N. J.) 1920. Act of 1917.

(1) A corporation with \$12,000 paid in capital, and a patent acquired for consideration of one dollar, deriving its income from royalties paid for use and manufacture of the article patented, is a corporation "having no invested capital or not more than a nominal capital," since the actual amount of invested capital was not used in the business of producing income but only to meet running expenses, and patents not paid in for property or shares may not be included in invested capital. There is a distinction between "invested capital" and "nominal capital," but patents are capital in name only, under the general definition of capital.

(2) A business which derives its income from royalties from a patent is in reality a business rendering personal service, since a patent is only the concrete embodiment of the owner's skill and knowledge which in effect it sells to its lessees of the patent rights.

(3) The Secretary of the Treasury cannot by regulation enlarge the scope of a revenue act.

Case No. 307

La Belle Iron Works v. United States,
Court of Claims, June 28, 1920. No. 34603. Act of 1917.

(1) Increase in value of plaintiff's ore lands, first declared to be surplus, and afterwards treated as basis for stock dividend, did not thereby become earned surplus or individual profits or invested capital. Stock dividends add nothing to, or take nothing from, a corporation's invested capital.

(2) Inequalities which arise in application of statute to particular cases cannot be corrected by judicial construction where the act is otherwise valid.

(3) Where the act is ambiguous or uncertain, construction of administrative officers charged with its enforcement is entitled to great respect.

Case No. 308

Porter v. Lederer,
267 Fed. 739 (D. C., E. D. Penn.) 1920. Act of 1917.

(1) Commission agents, doing business as a partnership, are not to be denied the privilege of being taxed as a "trade or business having no invested capital or no more than a nominal capital" because in more or less isolated transactions they bought and sold substantial bills of goods on their own account, using their own credit for the purpose, even where the profits were undrawn and had accumulated to a substantial amount, though not used in business.

(2) The excess profits tax levied by the Act of 1917 is essentially an excise tax, and should tax only such profits

as spring from the business done, and not those from sporadic or casual transactions.

Case No. 309

American Printing Company v. Commonwealth,

120 N. E. 686 (Mass.) 1918. State Act of 1918.

An act requiring all domestic corporations to pay a tax to the state upon income on which the corporation "is required to pay a tax to the United States," permits a taxpayer corporation to deduct from net income as first computed the amount of any war excess profits tax paid the federal government and the state tax is computed on the balance, since the corporation is not "required to pay a tax to the United States" upon the first amount.

See 175 N. Y. S. 337.

Case No. 310

Baltimore v. Baltimore Railroad,

77 U. S. 543 (1870). Act of 1862.

A stipulation that a bond obligor "shall pay all and any expense incidental to the issue of the bonds" does not render it liable for the payment of income tax on interest payments required by federal law to be withheld therefrom.

Case No. 311

Catawissa Railway Company v. P. & R. R. Company,

255 Pa. 269 (1916). Act of 1913.

A covenant by a lessee to pay all taxes "assessed or imposed . . . on the demised premises or any part thereof, or on the business there carried on or on the receipts gross or net derived therefrom" does not require

the lessee to pay the rent to the lessor without deduction for the income tax required by the federal government to be withheld by obligors and paid to it, since that tax is on the *rent* paid by the lessor which the covenant does not mention and *expressio unius est exclusio alterius*.

Case No. 312

Clopton v. P. & R. R. Company,
54 Penn. 356 (1867). Act of 1866.

A provision in a bond that it shall become void upon payment by the obligor of all principal and interest at the times specified "without any deduction, defalcation or abatement to be made of anything for or in respect of any taxes, charges or assessments whatsoever" does not require payment by the obligor of the full amount of interest when the federal or state government levies a tax on the interest and demands that such tax be withheld by the obligor and paid to it.

Case No. 313

Codman v. American Piano Company,
118 N. E. 344 (Mass.) 1918. Act of 1913.

A covenant in a lease requiring lessee to pay all taxes "payable for or in respect of the leased premises" does not require the lessee to pay the lessor's income tax by reason of the rents received, because a tax on real estate is one thing, and a tax on income from the real estate another.

Case No. 314

Des Moines Union Railway Company v. Chicago and Great Western,

177 N. W. 90 (1920). Act of 1913.

A covenant in a lease that the lessee shall pay the lessor "one-third of all taxes or assessments, special or otherwise, and public charges of every kind and nature that shall or may be taxed or assessed against the (lessor) company or its property" does not require payment by the lessee of the tax levied by the United States on income.

Case No. 315

Haight v. Pittsburg, Ft. W. & C. R. Company,

Fed. Cas. 5903 (C. C., W. D. Penn.) 1867. Act of 1864.

A stipulation in a corporate mortgage requiring payment of interest and principal "without any deduction . . . for or in respect of any taxes, charges or assessments whatsoever" does not prevent the corporation from deducting from interest payments amounts required by federal law to be paid to the Treasury as income tax on the bondholder, since the income tax is laid on the bondholder, and the contract mentioned does not impose any duty on the obligor except to pay the debt and interest without deduction for taxes levied on it.

Affirmed 73 U. S. 15.

Case No. 316

Haight v. Railroad Company,

73 U. S. 15 (1867.) Act of 1864.

A bond covenant to pay principal and interest "without any deduction . . . for or in respect of any taxes

... whatsoever" does not make the obligor liable to pay the obligee's income tax with respect to such interest, even where the government authorizes and requires the obligor to withhold and pay such tax, and the obligor is discharged of its duty when it pays the interest less the tax so withheld.

Affirming Fed. Cas. 5903.

Case No. 317

Kimball v. Cotting,

118 N. E. 866 (Mass.) 1918. Act of 1913.

(1) A covenant by a lessee to pay all taxes which may be payable upon or against the rent for or in respect to the period between the assessment day and the last prior assessment day or in respect to the period between the first of such assessment days and one calendar year prior thereto, whether assessed upon the same as rental or income, requires the payment of federal income taxes, the assessment day being December 31.

(2) A provision relieving a lessee from payment of any other taxes, after establishing a liability for such payment for a period between the first assessment day and one calendar year prior thereto, does not relieve from payment of taxes retroactively laid.

Case No. 318

Kimball v. Cotting,

125 N. E. 551 (Mass.) 1919. Acts of 1913, 1916 and 1917.

A lessee who covenants to pay "any taxes or excises which during the term may be lawfully levied, laid or assessed upon or against the rent payable hereunder whether levied or assessed upon the same as rental or as

income of any person or persons entitled thereto" is liable as well to pay the lessor's surtax by reason of the rent as he is the normal tax, since the surtax "is only an additional income tax."

Case No. 319

Little Schuylkill Nav. R. & C. Company v. P. & R. R. Company,

69 Pa. Sup. Ct. 122 (1918). Act of 1913.

A lessee who undertakes to "pay all taxes . . . which . . . shall be assessed or imposed under any existing or future law on the demised premises or any part thereof, or on the business there carried on, or on the receipts gross or net derived therefrom . . ." is not liable for payment of the income tax levied against the lessor by reason of the rental received for reasons stated in the case of *Catawissa R. Co. v. P. & R. R. Co.*, 255 Penn. 269.

Case No. 320

N. Penn. Ry. Company v. P. & R. Ry. Company,

95 Atl. 100 (Penn.) 1915. Act of 1913.

(1) Where a lessee railway company agreed to pay all taxes upon the "yearly payments herein agreed to be made" by the lessee for which the lessor would otherwise be liable, the lessee must pay the income tax assessed to the lessor by reason of such payments.

(2) There is a clear distinction between a tax on income received from rent, and a tax on rent. The tax on income is a tax irrespective of the source, or in other words, it is a tax on the net revenue derived from all sources. The net income from real estate may be much less than the rent derived from the same property. The parties may

settle between themselves what part the rent is of the lessor's entire net income.

Case No. 321

Ehrlich v. Brogan,

105 Atl. 511 (Penn.) 1918. Act of 1913.

An agreement between grantee and grantor that the former should pay rent without any deduction for taxes required him to pay the rent without deduction on account of the normal tax required by the federal government to be withheld at the source.

Dissenting opinion, based on ground that the tax required to be withheld was not a tax on the particular rent, but on the grantor's entire income, as was withheld by the grantee as agent for the grantor; the "income" cannot be allocated to any particular source but is the result of numerous additions and subtractions required to be made, and should be regarded as personal and not to be paid by another in the absence of explicit covenant so to do.

Case No. 322

**Philadelphia City Passenger R. Company v. Philadelphia
Rapid Transit Company,**

107 Atl. 329 (Penn.). Acts of 1916 and 1917.

A covenant by a lessee to pay all taxes lawfully imposed upon the lessor or for which the lessor would be liable on account of its earnings or profits requires the lessee to pay the lessor's federal income and profits taxes.

Case No. 323

Philadelphia & G. N. R. Company v. P. & R. R. Company,
108 Atl. 528 (Penn.) 1919. Act of 1917.

A lessee railroad company operating the property of the lessor is bound under a covenant to pay all taxes upon the rent payable under the lease for which the lessor would otherwise be liable to pay the excess profits tax of the lessor with reference to the rent received.

Case No. 324

Rensselaer & Saratoga R. Company v. Delaware and Hudson Company,
168 App. Div. N. Y. 699 (1915). Act of 1913.

(1) A lease which provides that the lessee shall be chargeable with all taxes upon the property demised and upon the business done, but excepts any taxes which might be levied against payments the lessee agreed to make directly to stockholders of the lessor corporation as part consideration for the use of the property does not require the lessee to pay the lessor corporation's income tax, where the United States authorities hold that the payments to the lessor's stockholders are income of the lessor itself.

(2) The income tax is not a tax imposed on the property from which it springs.

See also 257 Fed. 555.

Case No. 325

Suter v. Jordan Marsh Company,

113 N. E. 580 (Mass.) 1916. Act of 1913.

(1) Where a person who pays rent is required by law to pay a percentage thereon to the government in way of tax and on behalf of the person who receives the rent, such payment is a tax "in respect of the rent," and if he has agreed to pay all taxes or assessments in respect of the rent payable he is liable therefor.

(2) That the law was enacted subsequently to the contract is immaterial.

Case No. 326

Urquhart v. Marion Hotel Company,

194 S. W. 1 (Ark.) 1917. Act of 1913.

A covenant made by a bond obligor, that it will pay interest thereon "without deduction from either such principal or interest, for any tax or taxes, which (it) may be required to pay or retain therefrom, under any present or future law, (it) agreeing to pay such tax or taxes" does not render it liable to the obligee to pay the interest in full where the federal government required it to pay to the collector a tax of 2 % on the amount of the interest as an income tax on the obligee, since the taxes referred to in the covenant are taxes imposed on the bonds and coupons as such, and it is not at all certain that the specific payments made to the obligee will be subject to income tax, which is a personal obligation.

Case No. 327

Van Beil v. Brogan,

65 Pa. Sup. Ct. 384 (1915). Act of 1913.

A ground rent deed which provides that the covenantor shall pay the yearly sum agreed upon without deduction for "any taxes" and that he shall "pay all taxes whatsoever that shall hereafter be levied or assessed by virtue of any law whatever . . . on the yearly rent now charged thereon" requires the covenantor to pay the rent without deduction on account of income tax on the grantor required by the federal government to be withheld by obligors and paid to it.

Case No. 328

Van Rensselaer v. Dennison,

8 Barb. (N. Y.) 23 (1850). Local Act.

Where a lessee in a covenant of lease agrees to pay all taxes which may be assessed "for and in respect of the said premises, or any part thereof" he is not liable for the payment of taxes levied on the rent, since there is a distinction between the rent and the premises; the same result would be reached if the tax assessed were an income tax, and were levied on the rents as part of the lessor's income.

Case No. 329

Boske v. Comingore,

177 U. S. 459 (1900).

A regulation concerning the conduct of internal revenue officials and employees, regularly made by the Secretary of the Treasury, must be held to be legally effective unless and until its invalidity is so manifest that a court has no

choice except to hold that the Secretary of the Treasury has exceeded his authority and employed means not at all appropriate to the ends specified by Congress.

Case No. 330

Boston and P. R. Corporation v. Gill,

257 Fed. 221 (D. C. D. Mass.) 1916. Act of 1909.

Where taxpayers delayed in pressing their claims for the recovery of taxes illegally assessed as a result of an understanding with the collectors that they should await the decision of other pending cases but it became evident that an agreement as to interest would not be reached without the intervention of the court, their conduct does not prevent them from claiming interest because of any lack of diligence.

Case No. 331

Boughton v. United States,

12 Ct. Cls. 330 (1876).

(1) Where a party deposits money with a collector with authority to apply it in satisfaction of a proposed compromise, and the compromise is rejected, but the collector applies the money to the tax and turns it into the Treasury, the Court of Claims has jurisdiction of an action to recover it.

(2) A pledgee cannot retain a pledge to secure other debts or to apply to other objects than those for which it is given; nor can the government through a collector retain money paid him to apply to a compromise by rejecting the compromise and asserting the tax.

Case No. 332

Cheatham v. United States,
92 U. S. 85 (1875). Revised Statutes.

A taxpayer who has appealed from an assessment, and caused it to be set aside, another assessment being entered and paid without appeal to the Commissioner, may not bring suit to recover such payment unless his suit was brought within the statutory period running from date of the appeal or decision on the first assessment, since the two assessments are not to be regarded as one, and suits against the government must comply with all conditions imposed by Congress.

Case No. 333

Conant v. Kinney,
162 Fed. 581 (D. C. R. I.) 1908.

A suit will lie against an internal revenue collector to recover with interest taxes claimed to have been illegally exacted, because such a suit is not a suit against the United States, even where the collector is required by law to pay and does pay into the United States Treasury each day all sums collected by him.

Case No. 334

De Bary v. Carter,
102 Fed. 130 (C. C. A., 5th Circ.) 1900.

When a suit against a collector is instituted, for the recovery of taxes illegally collected, in a state court, the rules of which allow costs to the prevailing party, and is later removed to a federal court, costs will be allowed to the plaintiff, even though it is argued that the real

party in interest is the United States, it being against the rules of the court to allow costs for or against the United States.

Case No. 334 A

Dollar Savings Bank v. United States,

86 U. S. 227 (1874). Act of 1866.

- (1) Earnings carried to a contingent fund are taxable.
- (2) When the Commissioner has construed a law, which later is reënacted in identical language, such construction is not thereby adopted.
- (3) The United States may maintain an action of debt for the recovery of unassessed taxes owing.

Case No. 334 B

Emery, Bird, Thayer Realty Company v. United States,

198 Fed. 242 (D. C., W. D. Mo.) 1912. Act of 1909.

- (1) A suit to recover taxes alleged to have been illegally collected may be brought against the United States instead of against the collector who collected them.
- (2) Taxes on income from real estate are direct taxes.

Case No. 335

First National Bank of Greencastle v. United States,

15 Ct. Cls. 225 (1879). Revised Statutes.

- (1) The Commissioner's decision on any fact involved in a claim for refund under R. S. 3220, 3228, within his jurisdiction is final unless the case be one in which a suit may be maintained against a collector (R. S. 3226, 3227).
- (2) Whether or not the claim was filed before the

statute of limitations had run is such a fact, and an award may not be impeached for error in this regard.

(3) When the Commissioner makes an award, the liability of the government is fixed and the claimant is not obliged to satisfy other officials of its correctness.

Case No. 336

In re Jacobson,

T. D. 3000 (C. C. A., 7th Circ.) 1920. Revised Statutes.

Claims of the government for unpaid taxes rank before claims of general creditors of a bankrupt's estate, but rank after expenses of administration thereof.

Case No. 337

Klock Produce Company v. Hartson,

212 Fed. 758 (D. C., W. D. Wash.) 1914.

A suit to recover taxes illegally collected by a collector of internal revenue becomes a claim against the United States only after rendition of final judgment and issuance of a certificate of probable cause; therefore, interest on the amount of the judgment will be allowed up to the time review of the lower court decision is had, unless plaintiff himself bars such interest through long delay in presentation.

Case No. 338

Loomis v. Wattles,

266 Fed. 876 (C. C. A., 8th Circ.) 1920. Act of 1913.

(1) Where appeal was taken to the Commissioner of Internal Revenue after assessment but before payment of a disputed tax, and was disallowed, no further claim is

made necessary by Section 3226, R. S., before suit may be brought.

(2) If a ^s cash dividend, coupled with an increase in authorized capital stock, and made with the expectation that the stockholders will utilize it to purchase the stock, is treated both by the Bureau of Internal Revenue and the taxpayer as a stock dividend, it will be so treated by the court, because the court has no power to assess taxes, but must deal with assessments made by the Bureau.

(3) Stock dividends are not taxable as income.

Case No. 339

Michigan Central R. Company v. Slack,

Fed. Cas. 9527 (C. C. D. Mass.) 1873. Act of 1867.

(1) A penalty bad in part is bad in whole; thus, where a penalty of \$12,772.09 was sued for and on trial it was shown that no more than \$11,049.16 was due, the claim for the whole penalty must fall.

(2) Where the law imposes the duty on the assessor to determine whether a return is false or fraudulent and to fix or refrain from fixing the penalty accordingly, a penalty fixed by the assessor at the direction of the Commissioner is of no effect.

Case No. 340

New York Life Insurance Company v. Anderson,

257 Fed. 576 (D. C., S. D. N. Y.) 1919. Act of 1909.

(1) No adjustment should be made of income due to the approaching maturity of bonds and other securities purchased at a premium or discount, or on account of market fluctuation.

(2) In an action against a collector, errors in the assessment in taxpayer's favor may also be corrected, the

United States, which is the real defendant, not being affected by any estoppel which might affect the officer making the assessment.

(3) An action against a collector is for money had and received and only such money as in equity and good conscience the taxpayer is entitled to may be recovered.

Case No. 341

29 Opinion Attorney General, 217,

**Rendered by F. W. Lehmann, Acting, 1911. Act of 1909, and R. S. 3229,
3496**

(1) Every corporation is required to render a return of income, whether or not it has sufficient income to require the payment of a tax.

(2) In the case of failure to make returns in time, by corporations with incomes so limited as not to be liable to the payment of tax, liberal compromise of penalties is a course required by the spirit and policy of the laws of the United States.

Case No. 342

**Pennsylvania Cement Company v. Bradley Contracting
Company,**

D. C., S. D. N. Y. July 7, 1920. Act of 1918.

A court may not order a dividend by receivers to creditors until liability of the funds in the receivers' hands for income tax has been settled; in the absence of consent of the taxing authorities, this cannot be done during the taxable year.

Case No. 343

Philadelphia H. & P. R. Company v. Lederer,
239 Fed. 184 (D. C., E. D. Penn.) 1917.

(1) An action against a collector of internal revenue is in assumpsit on an implied contract, and if the collector dies, the action survives against his personal representatives.

(2) In the absence of statute, a suit for recovery of taxes illegally paid will not lie against the successors in office of the collector who made the illegal collection.

Case No. 344

Philadelphia H. & P. R. Company v. Lederer,
242 Fed. 492 (C. C. A., 3d Circ.) 1917.

(1) An action cannot be brought against a collector to recover back taxes paid to his predecessor in office.

(2) The Act of Feb. 8, 1899, providing that no suit against a government official in his capacity as such shall abate by reason of the expiration of his term in office is not applicable when only a claim for refund has been filed with the collector.

Affirming 239 Fed. 184.

Case No. 345

Rensselaer and S. R. Company v. Delaware and Hudson Company,

257 Fed. 555 (C. C. A., 2d Circ.) 1919.

There is no jurisdiction in the circuit court of appeals over a suit brought by one railroad company against another and the collector of internal revenue to construe the provisions of a contract existing between the two rail-

road companies relating to payment of income taxes on dividends paid by the one company directly to the stockholders of the other, both companies being citizens of the same state, unless the collector of internal revenue as co-defendant has invoked federal jurisdiction.

Case No. 346

Ridgway v. United States,

18 Ct. Cls. 707 (1883). Revised Statutes.

(1) The Commissioner may reconsider and revoke an allowance certified by him for refund at any time before payment, where suit is not previously brought and there has been no change in the head of the Bureau.

(2) Whether happening of the circumstances referred to alter the Commissioner's power to make refunds is not decided.

Case No. 347

Roberts v. Lowe,

236 Fed. 604 (D. C., S. D. N. Y.) 1916.

An action to recover money alleged to have been illegally exacted lies only against the exacting collector, since his successor could not obtain restitution from the government. If he has resigned, the plaintiff may sue the United States.

Case No. 348

Savings Institution v. Blair,

116 U. S. 200 (1886).

A suit to recover taxes alleged to have been illegally collected will not lie unless the taxpayer has first presented his claim to the Commissioner of Internal Revenue; an

indorsement of protest against the amount assessed made on the check of payment or on the return filed, or the submission of an amended return with a protest as to the amount exacted will not take the place of the "claim" required to be made of the Secretary of the Treasury and the Commissioner of Internal Revenue.

Case No. 349

Shaefer v. Ketchum,

Fed. Cas. 12693 (1867).

(1) A payment of internal revenue taxes is not a voluntary payment where both the collector and the party paying understand at the time payment must be made or the law will be enforced.

(2) A verbal protest noted on the back of the receipt given by the collector is sufficient protest to avoid the rule that taxes voluntarily paid may not be recovered.

Case No. 350

State ex rel. Wisconsin Trust Company v. Phelps,

178 N. W. 471 (1920). State Act of 1917.

An income taxpayer who claims no exemption on his return and makes no claim concerning the allowable exemption in the court of first instance cannot in an appellate court raise the question whether the statute is unconstitutional in that it does not allow equal exemptions to residents and nonresidents.

Case No. 351

Stegall v. Thurman,
175 Fed. 813 (D. C., N. D. Ga.) 1910.

It is fully settled that regulations of the Secretary of the Treasury with reference to internal revenue, and for the government of officers of the Revenue Department, have the force and effect of law, and such regulations should not be disregarded or annulled unless they are plainly and palpably inconsistent with the law.

Case No. 352

Stewart v. Barnes,
153 U. S. 456 (1894).

When a person from whom an internal revenue tax has been exacted accepts from the government without objection the amount collected, he may not thereafter sue the collector for interest on the sum paid him.

Case No. 353

United States v. Acorn Roofing Company,
204 Fed. 157 (D. C., E. D. N. Y.) 1912. Act of 1909.

(1) Every corporation was required by the Act of 1909 to make return whether or not subject to tax.

(2) Where a jury has brought in a judgment for \$1,000 for failure to make return, there can be no remedy on motion to set aside, but only by appeal or compromise with the Commissioner of Internal Revenue.

Case No. 354

United States v. Benowitz,

262 Fed. 223 (D. C., S. D. N. Y.) 1919. Act of 1918.

Article 406, Regulations 45, as originally promulgated, requiring that "all income tax returns must be verified under oath or affirmation," meant that tax returns made pursuant to the Act of 1918 be verified before any person authorized by local law to take oaths.

Case No. 355

United States v. General Inspection & Loading Co.,

204 Fed. 657 (D. C., N. J.) 1913. Act of 1909.

The notice of assessment required to be given to taxpayer corporations by section five may lawfully be given by mail and a notice so sent by the collector in a franked envelope bearing a return address, addressed to the corporation at its principal office and not returned, was presumptively received, and the burden rests on the corporation to prove the contrary if it would avoid penalties.

Case No. 356

United States v. Little Miami, etc., R. Company,

1 Fed. 700 (C. C., S. D. Ohio) 1880. Act of 1864.

(1) An action of debt will lie to collect income taxes due the government and it is immaterial that no assessment has been made.

(2) No statute of limitations bars suits for the collection of taxes.

(3) Lease of corporate property not dissolving a corporation, it remains liable for taxes theretofore accrued.

(4) Depreciation may not be deducted from gross income to determine net income subject to tax under the Act of 1864.

Reversed as to point 4, 108 U. S. 277.

Case No. 357

United States v. Military Construction Company,
204 Fed. 153 (D. C., W. D. Mo.) 1913. Act of 1909.

It is the well-settled practice of the government to require a return of income from every corporation subject to tax measured by income, whether or not its income is greater than exemptions and deductions allowable; this practice not being unreasonable, it must be sustained in the absence of direction from Congress otherwise to act.

Case No. 358

United States v. Minneapolis Threshing Machine Co.,
229 Fed. 1019 (D. C. Minn.) 1915. Act of 1909.

(1) An action of debt will lie to enable the government to recover taxes due, whether or not they have been assessed.

(2) No law existed at the time of this case to bar an action by the United States to recover taxes due.

Case No. 359

United States v. Savings Bank,
104 U. S. 728 (1881) R. S. 3220 and 3228.

(1) A claim certified by the Commissioner of Internal Revenue to be correct has the effect of an account stated, and will form the basis of a suit against the United States in the Court of Claims.

(2) If a claim is filed with the Collector in the taxpayer's district within two years, the action is not barred, because under the regulations the Commissioner acts through the Collector.

Case No. 361

United States v. Union Pacific R. Company,

1 Fed. 97 (C. C., E. D. Mo.) 1880. Act of 1866.

While a lien imposed by income tax laws relates back to the time the tax was due, it attaches only to property belonging to the taxpayer when demand for the tax was made, and assessment is essential to the creation of such a lien.

Case No. 362

Woolner v. United States,

13 Ct. Cls. 355 (1877). Revised Statutes.

(1) The Commissioner of Internal Revenue has final executive authority in the matter of refunds of taxes claimed to have been erroneously collected.

(2) Where he has in a case within the scope of his authority and jurisdiction ordered a refund the courts cannot inquire into the sufficiency of the evidence before him.

Case No. 363

Sybrandt v. United States,

19 Ct. Cls. 461 (1884). Revised Statutes.

Under Section 3220, R. S., the Commissioner of Internal Revenue is the final authority on the approval or rejection of claims for refund of taxes illegally collected, and neither

accounting officers or the courts can review his judgment where it is unimpeached for fraud or apparent mistake.

Case No. 364

Dodge v. Brady,

240 U. S. 122 (1916). Act of 1913.

(1) Where a bill to enjoin collection of a tax has been amended, after denial of motion for preliminary injunction, to show that claim for abatement of the disputed tax has been refused and to make prayer for recovery of tax paid, the court may take jurisdiction, even though the bill does not allege payment of the taxes, claim for and denial of refund thereof, since the Commissioner has by his refusal to abate the tax passed on the merits.

(2) The following provisions of the act held not invalid:

- (a) That provision subjecting stockholders in certain instances when computing surtaxes to liability for profits of corporations not divided or distributed.
- (b) That provision vesting the Secretary of the Treasury with an arbitrary power of determining without notice and without hearing whether a corporation has accumulated a greater undivided surplus than is reasonable for the needs of the business.
- (c) That provision permitting corporations to accumulate and withhold from surtax taxation such gains as may be reasonable for the needs of the business, without granting a like permission to individuals and partnerships.
- (d) The provisions levying graduated surtaxes on individuals but not on corporations.

Case No. 365

Dodge v. Osborn,

240 U. S. 118 (1916). Act of 1913.

(1) The provisions of R. S. 3224, 3220, 3226, 3227, are applicable to cases involving the enjoinder or recovery of taxes assessed or paid under the Act of 1913.

(2) Conceding for argument's sake the principle that where independent equities are present, a bill will lie to enjoin a federal tax, such a bill will not lie where the ground alleged is that the tax is unconstitutional.

(3) Or on the ground that equity has jurisdiction to avoid a multiplicity of similar suits by other taxpayers in like positions or because the tax claim was a lien and therefore a cloud on the title to property.

(4) There is no violation of due process of law in the requirement that before suit for the recovery of taxes alleged to have been illegally collected can be maintained an appeal must be taken to the Commissioner of Internal Revenue.

Case No. 366

Gouge v. Hart,

250 Fed. 802 (D. C., W. D. Va.) 1917. Revised Statutes.

(1) In Section 3224, R. S., providing that no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court, the word "restraining" was intended in the broad popular sense of hindering or impeding as well as of prohibiting or staying, and not in its narrowest technical sense as applicable only to suits praying for restraining orders and injunctions.

(2) Thus a suit to annul and set aside a sale of land made to enforce the collection of a tax will not be entertained.

(3) The provisions of the section cannot be waived by any officer of the government.

Case No. 367

Kohlhammer v. Smietanka,

239 Fed. 408 (D. C., N. D. Ill.) 1917.

(1) Where a taxing act provides that penalties shall be assessed and collected as part of the tax, and as other penalties under revenue laws are collected, Sec. 3224, R. S., prohibiting the injunction of the assessment or collection of any tax applies as well to forbid the injunction of the assessment and collection of such penalties.

(2) It is not a defense that punishment by way of fine and imprisonment for failure to pay the tax is provided, since such punishment does not satisfy the tax obligation, including penalties.

Case No. 368

Markle v. Kirkendall,

267 Fed. 498 (1920). Revised Statutes.

Section 3224, R. S., is an absolute bar to a bill to restrain the seizure of property for failure to pay taxes unless it is entirely clear that the property threatened with seizure or the person against whom the assessment is made is not liable for the tax asserted; and where the question is doubtful, as where the question is whether a business is conducted as a partnership or corporation, the injunction will not be granted.

Case No. 369

Straus v. Abrast Realty Company,
200 Fed. 327 (D. C., E. D. N. Y.) 1912. Act of 1909.

The provisions of R. S. 3224 prevent the maintenance of a bill in equity by a stockholder who seeks to enjoin the corporation of which he is a stockholder from voluntarily paying a tax assessed by the Commissioner of Internal Revenue.

Case No. 370

Camp Bird, Ltd., v. Howbert,
249 Fed. 27 (C. C. A., 8th Circ.) 1918. Act of 1909.

(1) The only limitation on the power of Congress to impose excise taxes is that they be geographically uniform.

(2) A statute (Section 3225, R. S.) which provides that no tax paid shall be refunded unless it is proved that the return was not "false nor fraudulent" includes and bars a refund when the return was unintentionally false.

(3) Sec. 3225, R. S., as it read in 1918 was applicable to taxes paid under the Act of 1909.

(4) That it was later amended prospectively is immaterial.

Certiorari denied 247 U. S. 509; reversed upon confession of error, 248 U. S. 590.

Case No. 371

Camp Bird, Ltd., v. Howbert,
262 Fed. 114 (C. C. A., 8th Circ.) 1919. Act of 1909.

(1) Upon remand from the Supreme Court, after confession of error by the Attorney General, held, the bar imposed by Section 3225 was not applicable.

(2) If a tax is judicially deemed to be recoverable, it follows that any penalty and interest collected therewith are likewise recoverable.

(3) A mining corporation was entitled under the Act of 1909 to deduct depreciation on equipment, but not on ore body.

Certiorari denied 252 U. S. 579.

Case No. 372

**Rock Island, Arkansas and Louisiana R. Company v.
United States,**

Supreme Court, October, 1920. Revised Statutes.

Because of R. S. 3226, 3228, a suit for the recovery of taxes from the United States will not lie until a claim for refund thereof, after payment, has been made and rejected, or six months have elapsed without action by the Commissioner, even though the merits of the case have been passed on and the taxpayer's contentions rejected by the Commissioner when acting on a claim for abatement, since men must turn square corners when bringing suit against the government, and furthermore it is possible the Commissioner might change his mind when the controversy is before him a second time.

Case No. 373

State Line and S. R. Company v. Davis,

228 Fed. 246 (D. C., W. D. Penn.) 1915.

(1) Where a claim for refund of a corporate excise tax paid under protest was before the Commissioner within the time required and rejected by him within two years before suit was brought, the requirements of R. S. 3226, 3227 and 3228 are satisfied.

(2) In a suit for illegal taxes against a collector interest is recoverable without specific statutory authority.

Case No. 374

New York Mail and Transportation Company v. Anderson,

234 Fed. 590 (C. C. A., 3d Circ.) 1916. Act of 1909; Revised Statutes.

(1) The Statute of Limitations contained in Sections 3226 and 3228, R. S., runs from the date of payment of the tax imposed; the limitation imposed by Section 3227 runs from the date of rejection by the Commissioner, or the lapse of six months from time of filing claim, whichever occurs first.

(2) A plaintiff recovering against a collector for the repayment of a tax illegally exacted is entitled to have the judgment state that it is with interest, even though the action is in effect against the United States.

Case No. 375

Public Service Railway Company v. Herold,

229 Fed. 902 (C. C. A., 3d Circ.) 1916. Revised Statutes.

A suit against a collector of internal revenue, brought pursuant to federal statutory provisions, must, under Sections 3227, 3228, R. S., be brought after appeal to the Commissioner for refund, which appeal must be made within two years from time of payment of the tax. Whether this condition can be obviated by suing the collector as an individual who has tortiously acted, *quære*.

Case No. 376

16 Opinion Attorney General, 248,**Rendered by Charles Devens, 1879. Revised Statutes.**

(1) The Commissioner may not set off an amount of tax illegally collected, but which is not refundable because of the lapse of the period of limitations, against another tax rightfully due to the United States.

(2) Nor may he under his power to compromise cases arising out of the revenue laws (R. S. 3229) voluntarily relinquish a part of a tax lawfully assessed upon and due from a solvent person or corporation.

Case No. 377

14 Opinion Attorney General, 615,**Rendered by George H. Williams, 1873. Act of 1872.**

(1) An application for refund of taxes alleged to have been illegally collected, not in the form prescribed, is sufficient on which to base an amendment, and when amended the perfected "claim" relates back in such manner as to defeat the Statute of Limitations, when the application filed first was in time but the claim in proper form was not.

(2) But delivery of a claim to a collector or other local officer is not a presentation to the Commissioner within the meaning of the Act (R. S. 3228).

Case No. 378

Savings Bank of Pittsburg v. United States,
16 Ct. Cls. 335 (1880). Revised Statutes.

The provisions of Section 3228 are complied with if a claim for refund is presented to the collector of internal revenue in the district in which the claimant resides.

Case No. 379

23 Opinion Attorney General, 507,

Rendered by James M. Beck, Acting, 1901. Revised Statutes.

(1) Under R. S. 3229 the Secretary of the Treasury may not compromise a case being pressed against the United States, as the section refers only to suits commenced by the government.

(2) R. S. 3469 authorizes the compromise of claims "in favor of the United States," but not otherwise.

Case No. 380

31 Opinion Attorney General, 459,

Rendered by A. Mitchell Palmer, 1919. Revised Statutes.

The Commissioner of Internal Revenue with the advice and consent of the Secretary of the Treasury is authorized to compromise claims for penalties imposed and interest charged against taxpayers for delinquencies under the income tax laws in all cases where in his judgment such compromises are for the interest of the United States, and whether or not the taxpayer is solvent.

Case No. 381

Rau v. United States,**260 Fed. 131 (C. C. A., 2d Circ.) 1919. Act of 1917.**

(1) The payment in good faith of all tax due, together with an amount in compromise of penalty, to a revenue officer who promised immunity from further punishment in a criminal proceeding is a compromise within Section 3229, R. S., and is a bar to criminal prosecution.

(2) Retention in the Treasury of the money collected is evidence of the compromise.

(3) Whether a compromise was in fact effected is a question for a jury.

(4) Proceeds of embezzlement are not income.

Case No. 382

Willingham v. United States,**208 Fed. 137 (C. C. A., 5th Circ.) 1913.**

Where a deputy collector finding accused selling liquor without having paid the tax agreed that if he would pay the tax and penalty the collector would not institute criminal proceedings, whereupon payment was made, a presumption that the offer was accepted will be indulged in, and prosecution barred, where the money was turned over to, and retained by, the Treasury.

Dissenting opinion on the ground that the law requires compromises to be made by the Commissioner of Internal Revenue with the advice and consent of the Secretary of the Treasury, and that a deputy collector has no authority so to do.

Case No. 383

Bailey v. Railroad,

89 U. S. 604 (1874). Act of 1864.

(1) An act levying a tax on "dividends in scrip" reaches a distribution by a corporation of paper termed "interest certificates" reciting that A. B. "being the holder of———shares of capital stock of the company, was entitled to \$—— payable ratably with the other like certificates, at the pleasure of the company out of its future earnings, with dividends thereon at the same rates and times as dividends should be paid upon the capital stock of the company," and being transferable on the books of the company, like capital stock.

(2) When a corporation liable for tax merges into a new corporation under a statute requiring that a dissolving corporation shall survive for the purpose of meeting obligations theretofore existing, that all such debts shall attach to the new corporation, and that all liens shall be preserved unimpaired, the new corporation is liable to pay the assessment made after the consolidation on account of the dividend declaration made theretofore.

(3) If a corporation has in fact had a hearing before the executive officers charged with collection of taxes, a recovery of the tax paid cannot be had in a judicial proceeding merely because the collector in enforcing payment of the tax had not conformed with certain proceedings of form intended to secure a full hearing to taxpayers.

Rehearing 106 U. S. 109.

Case No. 384

Blalock v. Georgia R. & E. Company,
228 Fed. 296 (C. C. A., 5th Circ.) 1915. Act of 1909.

A corporation which did business for three months during the year 1912 is nevertheless subject to a tax measured by its income from all sources during the entire year, and the question of inequality, if any, which results as between it and other corporations is not for the courts but for the Congress.

Case No. 385

Bowen v. Commonwealth,
101 S. E. 232 (Va.) 1919.

Whether or not an individual is liable to income tax imposed on residents by the state of Virginia depends upon whether he is domiciled in that state.

Case No. 386

Cary v. Savings Union,
89 U. S. 38 (1874). Civil War Acts.

When an income tax statute differentiates in the mode and rate of tax applicable to dividends, and to interest, a payment by a savings bank to its depositors, according to the amount of their deposits, of the interest which the bank has earned on the funds so deposited with it, is to be treated as a "dividend" and not as "interest."

Affirming Fed. Cas. 12317.

Case No. 387

Dunn v. Trefry,

260 Fed. 147 (C. C. A., 1st Circ.) 1919. Mass. State Act of 1915.

When an act taxes "income . . . received by any inhabitant of this commonwealth," the primary question as to a given person's liability is to be determined by the rules of domicile.

To the same effect, *Agassiz v. Trefry*, 260 Fed. 226.

Case No. 388

Hubbard v. Brainard,

35 Conn. 563 (1869). Act of 1864.

(1) The Act imposed a tax on stockholders of corporations with respect to that part of the net earnings of the corporations which had been ascertained to belong to them, whether or not actually distributed, and the tax attaches in a case where the net profits had been determined and divided.

(2) But the tax does not in the absence of fraud reach so-called undistributed profits which have been in fact expended by the corporation during the year for machinery and raw material, and in the payment of debts, in the ordinary course of business, since these are not a permanent location of funds by way of investment for the purpose of rental or income.

(3) The fact that in 1866 a law was enacted prohibiting suit for any tax claimed to have been illegally collected unless an appeal was first had to the Commissioner of Internal Revenue does not prevent suit for the recovery of a tax illegally collected before then, because (a) the Act of Congress was prospective only; (b) it could operate no further than to exclude maintenance of a suit in United

States courts, and (c) under the common law plaintiff had a vested right to recover from the Collector moneys illegally taken. It is immaterial that suit for the tax had been dismissed in a federal court because of the act mentioned.

(4) Suit for a tax claimed to have been illegally collected will lie against a Collector of Internal Revenue in a state court if the court has jurisdiction of both parties.

Reversed in part 79 U. S. 1.

Case No. 389

Morrill v. Jones,

106 U. S. 466 (1882).

When a statute authorizes the entrance duty free of animals imported for breeding, the Secretary of the Treasury may not require by regulation that such animals be of superior stock, even though the statute authorizes the promulgation of "such regulations as he may prescribe."

Case No. 390

New Orleans v. Fassman & Yancey,

14 La. Ann. 865 (1859). Local Act of 1856.

A tax upon income imposed by an act which defines income as "moneys, salaries, wages, pay, commission, brokerage and fees received in compensation of services or labor rendered and all revenues and dividends received upon stocks in money corporations not taxable," does not reach income derived from the operation of a cotton press, since the press is already taxed as property, and to tax the income therefrom would be double taxation and repugnant to the intention of the legislature.

Case No. 391

Opinion Attorney General,

T. D. 3044, rendered by A. Mitchell Palmer, 1920. Act of 1918.

(1) A corporation with a fiscal year ending September 30 may not, in 1920, change its fiscal year in order to bring it within Section 204 of the Act of 1918 since the method of accounting, and the tax liability, were accomplished facts.

(2) Contracts for the purchase of material may not properly be included in inventory taken at the end of the year for the purpose of ascertaining net income; therefore, such a contract may not be the basis for an inventory loss under Section 234 (a) (14).

Case No. 392

28 Opinion Attorney General, 241,

Rendered by George W. Wickersham, 1910. Act of 1909.

(1) Any corporation engaged in business after August 5, 1909, is amenable to the provisions of the Act of 1909.

(2) If a corporation has dissolved and distributed its assets prior to assessment, no lien can attach to such assets, on account of taxes accrued against the corporation.

(3) But the government may follow the assets of a dissolved corporation into the hands of any person not a bona fide purchaser, and collect the taxes accrued against such corporation from such persons, in the same manner as that by which any other creditor might obtain satisfaction of his debt.

Case No. 393**Opinion Attorney General,**

**Op. Ag. 2, Income Tax Rulings, rendered by A. Mitchell Palmer, 1920.
Act of 1918.**

(1) The Alien Property Custodian is not a trustee in such sense as to require him to make returns of income of persons whose property he holds with respect to income accruing from such property.

(2) When property so held including accrued income is returned to its owners, the Secretary of the Treasury may ascertain the amount of tax due to the government and require payment before releasing moneys deposited by the Custodian for the alien with the Treasury Department.

Case No. 394**Pacific Insurance Company v. Soule,**

74 U. S. 433 (1868). Act of 1866.

(1) When a person received taxable income in coined money, Section 9 of the Act denied the right to make return of the amounts received in coin, and pay in currency the amount of the tax due, and its return must be on an equal basis with that of other taxpayers receiving their income in currency.

(2) The income tax laid is not a direct tax, but is a duty or excise, and need not be apportioned.

Case No. 395

Reynolds v. Williams,**Fed. Cas. 11734 (C. C. D. Ind.) 1867. Civil War Acts.**

A corporation which pursuant to a scheme of reorganization takes over the assets of another corporation, among which is a fund consisting of United States bonds, which it agrees to hold in trust for the stockholders of the first corporation, receives no taxable income, as a result thereof, since the law requires a return of a trustee only of gains to the beneficiaries and here the beneficiaries have an equitable interest in the property taken, which is no more and no less than they had before.

Case No. 396

Roberts v. Anderson,**226 Fed. 7 (C. C. A., 2d Circ.) 1915. Act of 1909.**

The United States Express Company, although organized as at common law derives from New York state law the statutory privilege of suing and being sued in the names of its officers, and this is a sufficient cause to render it liable to pay excise tax as having derived from some law of the United States or a state an advantage not found at common law.

Case No. 397

San Francisco Savings and Loan Society v. Cary,**Fed. Cas. 12317 (C. C., Calif.) 1873. Act of 1866.**

(1) If an appeal is taken from an illegal assessment and decision against such appeal is had, whereupon the tax is paid, a further appeal is not prerequisite to suit.

(2) A savings institution which has a capital and reserve fund as security for deposits, and loans the capital, reserve and deposits, dividing part of the profits at the end of the year among the depositors in accordance with the size and age of the accounts, pays "dividends" to its depositors within the meaning of the Act, and must pay the tax with respect thereto.

Affirmed 89 U. S. 38.

Case No. 398

United States v. Chicago & Alton Railroad Company,
D. C., N. D. Ill., Jan. 5, 1920. Act of 1909.

The Commissioner of Internal Revenue has no authority to require rules of accounting to ascertain the net income of a railroad company different from the rules prescribed for such purpose by the Interstate Commerce Commission acting under authority of law conferred by Congress.

Case No. 399

United States v. Isham,
84 U. S. 496 (1873).

A device carried out by means of legal forms is subject to no legal censure, though it may be a device to avoid the revenue acts, and though its operation may have the effect of avoiding them. Thus where the law requires a stamp on checks above \$10 there is no fraud when an individual owing \$20 pays his debt with two checks for \$10 each.

Case No. 400

United States v. John J. McHatton,**T. D. 3043 (D. C. Mont.) 1920. Act of 1916.**

(1) An income tax may be and was imposed by retrospective law.

(2) A tax is not a debt and the government is not a creditor in a strict sense. The obligation on a taxpayer is of a higher nature than a debt.

(3) Distributees without consideration of corporate assets, such as stockholders in the case of corporate dissolution, are liable to the extent of the value of the distribution to them for corporate tax due to the United States, under the trust fund doctrine.

Case No. 401

United States v. Pittaro,**T. D. 2874 (D. C., N. D. Ohio) 1919. Act of 1918.**

(1) It is the mandatory duty of collectors of internal revenue to issue receipts for taxes collected when requested so to do by the taxpayer.

(2) Such receipts are documents required by provisions of internal revenue laws and regulations and it is therefore an offense falsely to simulate such receipts.

(3) It is no matter whether the simulation is made on a regular blank, falsely signed, or whether the blank itself is simulated.

(4) Conversation had between the defendant and those for whom the false receipt was procured is immaterial, and it is likewise immaterial whether such persons were in fact liable for tax.

Case No. 402

United States v. Turner,

Fed. Cas. 16548 (1873).

The lien which attaches on property under the federal income tax act of July 13, 1866, to secure payment of a tax, is valid as against innocent purchasers for value.

APPENDIX
CONTAINING FEDERAL INCOME TAX LAWS OF
1909, 1913, 1916, 1917 & 1918

ACT OF 1909

(Approved Aug. 5, 1909.)

SEC. 38. That every corporation, joint-stock company or association, organized for profit and having a capital stock represented by shares, and every insurance company, now or hereafter organized under the laws of the United States or of any State or Territory of the United States or under the acts of Congress applicable to Alaska or the District of Columbia, or now or hereafter organized under the laws of any foreign country and engaged in business in any State or Territory of the United States or in Alaska or in the District of Columbia, shall be subject to pay annually a special excise tax with respect to the carrying on or doing business by such corporation, joint-stock company or association, or insurance company, equivalent to one per centum upon the entire net income over and above five thousand dollars received by it from all sources during such year, exclusive of amounts received by it as dividends upon stock of other corporations, joint-stock companies or associations, or insurance companies, subject to the tax hereby imposed; or if organized under the laws of any foreign country, upon the amount of net income over and above five thousand dollars received by it from business transacted and capital invested within the United States and its Territories, Alaska, and the District of Columbia during such year, exclusive of amounts so received by it as dividends upon stock of other corporations, joint-stock companies or associations, or insurance companies, subject to the tax hereby imposed: *Provided, however,* That nothing in this section contained shall apply to labor, agricultural or horticultural organizations, or to fraternal beneficiary societies, orders, or associations operating under the lodge system, and providing for the payment of life, sick, accident, and other benefits to the members of such societies, orders or associations, and dependents of such members, nor to domestic building and loan associations, organized and operated exclu-

sively for the mutual benefit of their members, nor to any corporation or association organized and operated exclusively for religious, charitable, or educational purposes, no part of the net income of which inures to the benefit of any private stockholder or individual.

Second. Such net income shall be ascertained by deducting from the gross amount of the income of such corporation, joint-stock company or association, or insurance company, received within the year from all sources, (first) all the ordinary and necessary expenses actually paid within the year out of income in the maintenance and operation of its business and properties, including all charges such as rentals or franchise payments, required to be made as a condition to the continued use or possession of property; (second) all losses actually sustained within the year and not compensated by insurance or otherwise, including a reasonable allowance for depreciation of property, if any, and in the case of insurance companies the sums other than dividends, paid within the year on policy and annuity contracts and the net addition, if any, required by law to be made within the year to reserve funds; (third) interest actually paid within the year on its bonded or other indebtedness to an amount of such bonded and other indebtedness not exceeding the paid-up capital stock of such corporation, joint-stock company or association, or insurance company, outstanding at the close of the year, and in the case of a bank, banking association or trust company, all interest actually paid by it within the year on deposits; (fourth) all sums paid by it within the year for taxes imposed under the authority of the United States or of any State or Territory thereof, or imposed by the government of any foreign country as a condition to carry on business therein; (fifth) all amounts received by it within the year as dividends upon stock of other corporations, joint-stock companies or associations, or insurance companies, subject to the tax hereby imposed: *Provided*, That in the case of a corporation, joint-stock company or association, or insurance company, organized under the laws of a foreign country, such net income shall be ascertained by deducting from the gross amount of its income received within the year from business transacted and capital

invested within the United States and any of its Territories, Alaska, and the District of Columbia, (first) all the ordinary and necessary expenses actually paid within the year out of earnings in the maintenance and operation of its business and property within the United States and its Territories, Alaska, and the District of Columbia, including all charges such as rentals or franchise payments required to be made as a condition to the continued use or possession of property; (second) all losses actually sustained within the year in business conducted by it within the United States or its Territories, Alaska, or the District of Columbia not compensated by insurance or otherwise, including a reasonable allowance for depreciation of property, if any, and in the case of insurance companies the sums other than dividends, paid within the year on policy and annuity contracts and the net addition, if any, required by law to be made within the year to reserve funds; (third) interest actually paid within the year on its bonded or other indebtedness to an amount of such bonded and other indebtedness, not exceeding the proportion of its paid-up capital stock outstanding at the close of the year which the gross amount of its income for the year from business transacted and capital invested within the United States and any of its Territories, Alaska, and the District of Columbia bears to the gross amount of its income derived from all sources within and without the United States; (fourth) the sums paid by it within the year for taxes imposed under the authority of the United States or of any State or Territory thereof; (fifth) all amounts received by it within the year as dividends upon stock of other corporations, joint-stock companies or associations, and insurance companies, subject to the tax hereby imposed. In the case of assessment insurance companies the actual deposit of sums with State or Territorial officers, pursuant to law, as additions to guaranty or reserve funds shall be treated as being payments required by law to reserve funds.

Third. There shall be deducted from the amount of the net income of each of such corporations, joint-stock companies or associations, or insurance companies, ascertained as provided in the foregoing paragraphs of this section, the sum of five thou-

sand dollars, and said tax shall be computed upon the remainder of said net income of such corporation, joint-stock company or association, or insurance company, for the year ending December thirty-first, nineteen hundred and nine, and for each calendar year thereafter; and on or before the first day of March, nineteen hundred and ten, and the first day of March in each year thereafter, a true and accurate return under oath or affirmation of its president, vice-president, or other principal officer, and its treasurer or assistant treasurer, shall be made by each of the corporations, joint-stock companies or associations, and insurance companies, subject to the tax imposed by this section, to the collector of internal revenue for the district in which such corporation, joint-stock company or association, or insurance company has its principal place of business, or, in the case of a corporation, joint-stock company or association, or insurance company, organized under the laws of a foreign country, in the place where its principal business is carried on within the United States, in such form as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe, setting forth (first) the total amount of the paid-up capital stock of such corporation, joint-stock company or association, or insurance company, outstanding at the close of the year; (second) the total amount of the bonded and other indebtedness of such corporation, joint-stock company or association, or insurance company at the close of the year; (third) the gross amount of the income of such corporation, joint-stock company or association, or insurance company received during such year from all sources, and if organized under the laws of a foreign country the gross amount of its income received within the year from business transacted and capital invested within the United States and any of its Territories, Alaska, and the District of Columbia; also the amount received by such corporation, joint-stock company or association, or insurance company within the year by way of dividends upon stock of other corporations, joint-stock companies or associations, or insurance companies, subject to the tax imposed by this section; (fourth) the total amount of all the ordinary and necessary expenses actually paid out of earnings in the maintenance and operation

of the business and properties of such corporation, joint-stock company or association, or insurance company within the year, stating separately all charges such as rentals or franchise payments required to be made as a condition to the continued use or possession of property, and if organized under the laws of a foreign country the amount so paid in the maintenance and operation of its business within the United States and its Territories, Alaska, and the District of Columbia; (fifth) the total amount of all losses actually sustained during the year and not compensated by insurance or otherwise, stating separately any amounts allowed for depreciation of property, and in the case of insurance companies the sums other than dividends, paid within the year on policy and annuity contracts and the net addition, if any, required by law to be made within the year to reserve funds; and in the case of a corporation, joint-stock company or association, or insurance company, organized under the laws of a foreign country, all losses actually sustained by it during the year in business conducted by it within the United States or its Territories, Alaska, and the District of Columbia, not compensated by insurance or otherwise, stating separately any amounts allowed for depreciation of property, and in the case of insurance companies the sums other than dividends, paid within the year on policy and annuity contracts and the net addition, if any, required by law to be made within the year to reserve fund; (sixth) the amount of interest actually paid within the year on its bonded or other indebtedness to an amount of such bonded and other indebtedness not exceeding the paid-up capital stock of such corporation, joint-stock company or association, or insurance company, outstanding at the close of the year, and in the case of a bank, banking association, or trust company, stating separately all interest paid by it within the year on deposits; or in case of a corporation, joint-stock company or association, or insurance company, organized under the laws of a foreign country, interest so paid on its bonded or other indebtedness to an amount of such bonded and other indebtedness not exceeding the proportion of its paid-up capital stock outstanding at the close of the year, which the gross amount of its income for the year from business transacted and capital invested within

the United States and any of its Territories, Alaska, and the District of Columbia, bears to the gross amount of its income derived from all sources within and without the United States; (seventh) the amount paid by it within the year for taxes imposed under the authority of the United States or any State or Territory thereof, and separately the amount so paid by it for taxes imposed by the government of any foreign country as a condition to carrying on business therein; (eighth) the net income of such corporation, joint-stock company or association, or insurance company, after making the deductions in this section authorized. All such returns shall as received be transmitted forthwith by the collector to the Commissioner of Internal Revenue.

Fourth. Whenever evidence shall be produced before the Commissioner of Internal Revenue which in the opinion of the commissioner justifies the belief that the return made by any corporation, joint-stock company or association, or insurance company is incorrect, or whenever any collector shall report to the Commissioner of Internal Revenue that any corporation, joint-stock company or association, or insurance company has failed to make a return as required by law, the Commissioner of Internal Revenue may require from the corporation, joint-stock company or association, or insurance company making such return, such further information with reference to its capital, income, losses, and expenditures as he may deem expedient; and the Commissioner of Internal Revenue, for the purpose of ascertaining the correctness of such return or for the purpose of making a return where none has been made, is hereby authorized, by any regularly appointed revenue agent specially designated by him for that purpose, to examine any books and papers bearing upon the matters required to be included in the return of such corporation, joint-stock company or association, or insurance company, and to require the attendance of any officer or employee of such corporation, joint-stock company or association, or insurance company, and to take his testimony with reference to the matter required by law to be included in such return, with power to administer oaths to such person or persons; and the Commissioner of Internal Revenue may also invoke the

aid of any court of the United States having jurisdiction to require the attendance of such officers or employees and the production of such books and papers. Upon the information so acquired the Commissioner of Internal Revenue may amend any return or make a return where none has been made. All proceedings taken by the Commissioner of Internal Revenue under the provisions of this section shall be subject to the approval of the Secretary of the Treasury.

Fifth. All returns shall be retained by the Commissioner of Internal Revenue, who shall make assessments thereon; and in case of any return made with false or fraudulent intent, he shall add one hundred per centum of such tax, and in case of a refusal or neglect to make a return or to verify the same as aforesaid he shall add fifty per centum of such tax. In case of neglect occasioned by the sickness or absence of an officer of such corporation, joint-stock company or association, or insurance company, required to make said return, or for other sufficient reason, the collector may allow such further time for making and delivering such return as he may deem necessary, not exceeding thirty days. The amount so added to the tax shall be collected at the same time and in the same manner as the tax originally assessed, unless the refusal, neglect, or falsity is discovered after the date for payment of said taxes, in which case the amount so added shall be paid by the delinquent corporation, joint-stock company or association, or insurance company, immediately upon notice given by the collector. All assessments shall be made and the several corporations, joint-stock companies or associations, or insurance companies, shall be notified of the amount for which they are respectively liable on or before the first day of June of each successive year, and said assessments shall be paid on or before the thirtieth day of June, except in cases of refusal or neglect to make such return, and in cases of false or fraudulent returns, in which cases the Commissioner of Internal Revenue shall, upon the discovery thereof, at any time within three years after said return is due, make a return upon information obtained as above provided for, and the assessment made by the Commissioner of Internal Revenue thereon shall be paid by such corporation, joint-stock company or association, or insurance

company immediately upon notification of the amount of such assessment; and to any sum or sums due and unpaid after the thirtieth day of June in any year, and for ten days after notice and demand thereof by the collector, there shall be added the sum of five per centum on the amount of tax unpaid and interest at the rate of one per centum per month upon said tax from the time the same becomes due.

Sixth. When the assessment shall be made, as provided in this section, the returns, together with any corrections thereof which may have been made by the commissioner, shall be filed in the office of the Commissioner of Internal Revenue and shall constitute public records and be open to inspection as such.

Seventh. It shall be unlawful for any collector, deputy collector, agent, clerk, or other officer or employee of the United States to divulge or make known in any manner whatever not provided by law to any person any information obtained by him in the discharge of his official duty, or to divulge or make known in any manner not provided by law any document received, evidence taken, or report made under this section except upon the special direction of the President; and any offense against the foregoing provision shall be a misdemeanor and be punished by a fine not exceeding one thousand dollars, or by imprisonment not exceeding one year, or both, at the discretion of the court.

Eighth. If any of the corporations, joint-stock companies or associations, or insurance companies aforesaid, shall refuse or neglect to make a return at the time or times hereinbefore specified in each year, or shall render a false or fraudulent return, such corporation, joint stock company or association, or insurance company shall be liable to a penalty of not less than one thousand dollars and not exceeding ten thousand dollars.

Any person authorized by law to make, render, sign, or verify any return, who makes any false or fraudulent return, or statement, with intent to defeat or evade the assessment required by this section to be made, shall be guilty of a misdemeanor, and shall be fined not exceeding one thousand dollars or be imprisoned not exceeding one year, or both, at the discretion of the court, with the costs of prosecution.

All laws relating to the collection, remission, and refund of internal-revenue taxes, so far as applicable to and not inconsistent with the provisions of this section, are hereby extended and made applicable to the tax imposed by this section.

Jurisdiction is hereby conferred upon the circuit and district courts of the United States for the district within which any person summoned under this section to appear to testify or to produce books as aforesaid, shall reside, to compel such attendance, production of books, and testimony by appropriate process.

ACT OF 1913

(Approved Oct. 3, 1913.)

A. Subdivision 1. That there shall be levied, assessed, collected and paid annually upon the entire net income arising or accruing from all sources in the preceding calendar year to every citizen of the United States, whether residing at home or abroad, and to every person residing in the United States, though not a citizen thereof, a tax of 1 per centum per annum upon such income, except as hereinafter provided; and a like tax shall be assessed, levied, collected, and paid annually upon the entire net income from all property owned and of every business, trade, or profession carried on in the United States by persons residing elsewhere.

Subdivision 2. In addition to the income tax provided under this section (herein referred to as the normal income tax) there shall be levied, assessed, and collected upon the net income of every individual an additional income tax (herein referred to as the additional tax) of 1 per centum per annum upon the amount by which the total net income exceeds \$20,000 and does not exceed \$50,000, and 2 per centum per annum upon the amount by which the total net income exceeds \$50,000 and does not exceed \$75,000, 3 per centum per annum upon the amount by which the total net income exceeds \$75,000 and does not exceed \$100,000, 4 per centum per annum upon the amount by which the total net income exceeds \$100,000 and does not exceed \$250,000, 5 per centum per annum upon the amount by which the total net income exceeds \$250,000 and does not exceed \$500,000, and 6 per centum per annum upon the amount by which the total net income exceeds \$500,000. All the provisions of this section relating to individuals who are chargeable with the normal income tax, so far as they are applicable and are not inconsistent with this subdivision of paragraph A, shall apply to the levy, assessment, and collection of the additional tax imposed under this section. Every person subject to this

additional tax shall, for the purpose of its assessment and collection, make a personal return of his total net income from all sources, corporate or otherwise, for the preceding calendar year, under rules and regulations to be prescribed by the Commissioner of Internal Revenue and approved by the Secretary of the Treasury. For the purpose of this additional tax the taxable income of any individual shall embrace the share to which he would be entitled of the gains and profits, if divided or distributed, whether divided or distributed or not, of all corporations, joint-stock companies, or associations however created or organized, formed or fraudulently availed of for the purpose of preventing the imposition of such tax through the medium of permitting such gains and profits to accumulate instead of being divided or distributed; and the fact that any such corporation, joint-stock company, or association, is a mere holding company, or that the gains and profits are permitted to accumulate beyond the reasonable needs of the business shall be prima facie evidence of a fraudulent purpose to escape such tax; but the fact that the gains and profits are in any case permitted to accumulate and become surplus shall not be construed as evidence of a purpose to escape the said tax in such case unless the Secretary of the Treasury shall certify that in his opinion such accumulation is unreasonable for the purposes of the business. When requested by the Commissioner of Internal Revenue, or any district collector of internal revenue, such corporation, joint-stock company, or association shall forward to him a correct statement of such profits and the names of the individuals who would be entitled to the same if distributed.

B. That, subject only to such exemptions and deductions as are hereinafter allowed, the net income of a taxable person shall include gains, profits, and income derived from salaries, wages, or compensation for personal service of whatever kind and in whatever form paid, or from professions, vocations, businesses, trade, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in real or personal property, also from interest, rent, dividends, securities, or the transaction of any lawful business carried on

for gain or profit, or gains or profits and income derived from any source whatever, including the income from but not the value of property acquired by gift, bequest, devise, or descent: *Provided*, That the proceeds of life insurance policies paid upon the death of the person insured or payments made by or credited to the insured, on life insurance, endowment, or annuity contracts, upon the return thereof to the insured at the maturity of the term mentioned in the contract, or upon surrender of contract, shall not be included as income.

That in computing net income for the purpose of the normal tax there shall be allowed as deductions: First, the necessary expenses actually paid in carrying on any business, not including personal, living, or family expenses; second, all interest paid within the year by a taxable person on indebtedness; third, all national, State, county, school, and municipal taxes paid within the year, not including those assessed against local benefits; fourth, losses actually sustained during the year, incurred in trade or arising from fires, storms, or shipwreck, and not compensated for by insurance or otherwise; fifth, debts due to the taxpayer actually ascertained to be worthless and charged off within the year; sixth, a reasonable allowance for the exhaustion, wear and tear of property arising out of its use or employment in the business, not to exceed, in the case of mines, 5 per centum of the gross value at the mine of the output for the year for which the computation is made, but no deduction shall be made for any amount of expense of restoring property or making good the exhaustion thereof for which an allowance is or has been made: *Provided*, That no deduction shall be allowed for any amount paid out for new buildings, permanent improvements, or betterments, made to increase the value of any property or estate; seventh, the amount received as dividends upon the stock or from the net earnings of any corporation, joint-stock company, association, or insurance company which is taxable upon its net income as hereinafter provided; eighth, the amount of income, the tax upon which has been paid or withheld for payment at the source of the income, under the provisions of this section, provided that whenever the tax upon the income of a person is required to be withheld and paid at the source

as hereinafter required, if such annual income does not exceed the sum of \$3,000 or is not fixed or certain, or is indefinite, or irregular as to amount or time of accrual, the same shall not be deducted in the personal return of such person.

The net income from property owned and business carried on in the United States by persons residing elsewhere shall be computed upon the basis prescribed in this paragraph and that part of paragraph G of this section relating to the computation of the net income of corporations, joint-stock and insurance companies, organized, created, or existing under the laws of foreign countries, in so far as applicable.

That in computing net income under this section there shall be excluded the interest upon the obligations of a State or any political subdivision thereof, and upon the obligations of the United States or its possessions; also the compensation of the present President of the United States during the term for which he has been elected, and of the judges of the supreme and inferior courts of the United States now in office, and the compensation of all officers and employees of a State or any political subdivision thereof except when such compensation is paid by the United States Government.

C. That there shall be deducted from the amount of the net income of each of said persons, ascertained as provided herein, the sum of \$3,000, plus \$1,000 additional if the person making the return be a married man with a wife living with him, or plus the sum of \$1,000 additional if the person making the return be a married woman with a husband living with her; but in no event shall this additional exemption of \$1,000 be deducted by both a husband and a wife: *Provided*, That only one deduction of \$4,000 shall be made from the aggregate income of both husband and wife when living together.

D. The said tax shall be computed upon the remainder of said net income of each person subject thereto, accruing during each preceding calendar year ending December thirty-first: *Provided, however*, That for the year ending December thirty-first, nineteen hundred and thirteen, said tax shall be computed on the net income accruing from March first to December thirty-first, nineteen hundred and thirteen, both dates inclusive,

after deducting five-sixths only of the specific exemptions and deductions herein provided for. On or before the first day of March, nineteen hundred and fourteen, and the first day of March in each year thereafter, a true and accurate return, under oath or affirmation, shall be made by each person of lawful age, except as hereinafter provided, subject to the tax imposed by this section, and having a net income of \$3,000 or over for the taxable year, to the collector of internal revenue for the district in which such person resides or has his principal place of business, or, in the case of a person residing in a foreign country, in the place where his principal business is carried on within the United States, in such form as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe, setting forth specifically the gross amount of income from all separate sources and from the total thereof, deducting the aggregate items or expenses and allowance herein authorized; guardians, trustees, executors, administrators, agents, receivers, conservators, and all persons, corporations, or associations acting in any fiduciary capacity, shall make and render a return of the net income of the person for whom they act, subject to this tax, coming into their custody or control and management, and be subject to all the provisions of this section which apply to individuals: *Provided*, That a return made by one of two or more joint guardians, trustees, executors, administrators, agents, receivers, and conservators, or other persons acting in a fiduciary capacity, filed in the district where such person resides, or in the district where the will or other instrument under which he acts is recorded, under such regulations as the Secretary of the Treasury may prescribe, shall be a sufficient compliance with the requirements of this paragraph; and also all persons, firms, companies, copartnerships, corporations, joint-stock companies or associations, and insurance companies, except as hereinafter provided, in whatever capacity acting, having the control, receipt, disposal, or payment of fixed or determinable annual or periodical gains, profits, and income of another person subject to tax, shall in behalf of such person deduct and withhold from the payment an amount equivalent to the normal income tax upon the same and make and render a

return, as aforesaid, but separate and distinct, of the portion of the income of each person from which the normal tax has been thus withheld, and containing also the name and address of such person or stating that the name and address or the address, as the case may be, are unknown: *Provided*, That the provision requiring the normal tax of individuals to be withheld at the source of the income shall not be construed to require any of such tax to be withheld prior to the first day of November, nineteen hundred and thirteen: *Provided further*, That in either case above mentioned no return of income not exceeding \$3,000 shall be required: *Provided further*, That any persons carrying on business in partnership shall be liable for income tax only in their individual capacity, and the share of the profits of a partnership to which any taxable partner would be entitled if the same were divided, whether divided or otherwise, shall be returned for taxation and the tax paid, under the provisions of this section, and any such firm, when requested by the Commissioner of Internal Revenue, or any district collector, shall forward to him a correct statement of such profits and the names of the individuals who would be entitled to the same, if distributed: *Provided further*, That persons liable for the normal income tax only, on their own account or in behalf of another, shall not be required to make return of the income derived from dividends on the capital stock or from the net earnings of corporations, joint-stock companies or associations, and insurance companies taxable upon their net income as hereinafter provided. Any person for whom return has been made and the tax paid, or to be paid as aforesaid, shall not be required to make a return unless such person has other net income, but only one deduction of \$3,000 shall be made in the case of any such person. The collector or deputy collector shall require every list to be verified by the oath or affirmation of the party rendering it. If the collector or deputy collector have reason to believe that the amount of any income returned is understated, he shall give due notice to the person making the return to show cause why the amount of the return should not be increased, and upon proof of the amount understated may increase the same accordingly. If dissatisfied with the decision of the collector, such

person may submit the case, with all the papers, to the Commissioner of Internal Revenue for his decision, and may furnish sworn testimony of witnesses to prove any relevant facts.

E. That all assessments shall be made by the Commissioner of Internal Revenue and all persons shall be notified of the amount for which they are respectively liable, on or before the first day of June of each successive year, and said assessments shall be paid on or before the thirtieth day of June, except in cases of refusal or neglect to make such return and in cases of false or fraudulent returns, in which cases the Commissioner of Internal Revenue shall, upon the discovery thereof, at any time within three years after said return is due, make a return upon information obtained as provided for in this section or by existing law, and the assessment made by the Commissioner of Internal Revenue thereon shall be paid by such person or persons immediately upon notification of the amount of such assessment; and to any sum or sums due and unpaid after the thirtieth day of June in any year, and for ten days after notice and demand thereof by the collector, there shall be added the sum of 5 per centum on the amount of tax unpaid, and interest at the rate of 1 per centum per month upon said tax from the time the same became due, except from the estates of insane, deceased, or insolvent persons.

All persons, firms, copartnerships, companies, corporations, joint-stock companies or associations, and insurance companies, in whatever capacity acting, including lessees or mortgagors of real or personal property, trustees acting in any trust capacity, executors, administrators, agents, receivers, conservators, employers, and all officers and employees of the United States having the control, receipt, custody, disposal, or payment of interest, rent, salaries, wages, premiums, annuities, compensation, remuneration, emoluments, or other fixed or determinable annual gains, profits, and income of another person, exceeding \$3,000 for any taxable year, other than dividends on capital stock, or from the net earnings of corporations and joint-stock companies or associations subject to like tax, who are required to make and render a return in behalf of another, as provided herein, to the collector of his, her, or its district, are hereby

authorized and required to deduct and withhold from such annual gains, profits, and income such sum as will be sufficient to pay the normal tax imposed thereon by this section, and shall pay to the officer of the United States Government authorized to receive the same; and they are each hereby made personally liable for such tax. In all cases where the income tax of a person is withheld and deducted and paid or to be paid at the source, as aforesaid, such person shall not receive the benefit of the deduction and exemption allowed in paragraph C of this section except by an application for refund of the tax unless he shall, not less than thirty days prior to the day on which the return of his income is due, file with the person who is required to withhold and pay tax for him, a signed notice in writing claiming the benefit of such exemption and thereupon no tax shall be withheld upon the amount of such exemption: *Provided*, That if any person for the purpose of obtaining any allowance or reduction by virtue of a claim for such exemption, either for himself or for any other person, knowingly makes any false statement or false or fraudulent representation, he shall be liable to a penalty of \$300; nor shall any person under the foregoing conditions be allowed the benefit of any deduction provided for in subsection B of this section unless he shall, not less than thirty days prior to the day on which the return of his income is due, either file with the person who is required to withhold and pay tax for him a true and correct return of his annual gains, profits, and income from all other sources, and also the deductions asked for, and the showing thus made shall then become a part of the return to be made in his behalf by the person required to withhold and pay the tax, or likewise make application for deductions to the collector of the district in which return is made or to be made for him: *Provided further*, That if such person is a minor or an insane person, or is absent from the United States, or is unable owing to serious illness to make the return and application above provided for, the return and application may be made for him or her by the person required to withhold and pay the tax, he making oath under the penalties of this Act that he has sufficient knowledge of the affairs and property of his beneficiary to enable him to make a

full and complete return for him or her, and that the return and application made by him are full and complete: *Provided further*, That the amount of the normal tax hereinbefore imposed shall be deducted and withheld from fixed and determinable annual gains, profits, and income derived from interest upon bonds and mortgages, or deeds of trust or other similar obligations of corporations, joint-stock companies or associations, and insurance companies, whether payable annually or at shorter or longer periods, although such interest does not amount to \$3,000, subject to the provisions of this section requiring the tax to be withheld at the source and deducted from annual income and paid to the Government; and likewise the amount of such tax shall be deducted and withheld from coupons, checks, or bills of exchange for or in payment of interest upon bonds of foreign countries and upon foreign mortgages or like obligations (not payable in the United States), and also from coupons, checks, or bills of exchange for or in payment of any dividends upon the stock or interest upon the obligations of foreign corporations, associations, and insurance companies engaged in business in foreign countries; and the tax in each case shall be withheld and deducted for and in behalf of any person subject to the tax hereinbefore imposed, although such interest, dividends, or other compensation does not exceed \$3,000, by any banker or person who shall sell or otherwise realize coupons, checks, or bills of exchange drawn or made in payment of any such interest or dividends (not payable in the United States), and any person who shall obtain payment (not in the United States), in behalf of another of such dividends and interest by means of coupons, checks, or bills of exchange, and also any dealer in such coupons who shall purchase the same for any such dividends or interest (not payable in the United States), otherwise than from a banker or another dealer in such coupons; but in each case the benefit of the exemption and the deduction allowable under this section may be had by complying with the foregoing provisions of this paragraph.

All persons, firms, or corporations undertaking as a matter of business or for profit the collection of foreign payments of such interest or dividends by means of coupons, checks, or bills

of exchange shall obtain a license from the Commissioner of Internal Revenue, and shall be subject to such regulations enabling the Government to ascertain and verify the due withholding and payment of the income tax required to be withheld and paid as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe; and any person who shall knowingly undertake to collect such payments as aforesaid without having obtained a license therefor, or without complying with such regulations, shall be deemed guilty of a misdemeanor and for each offense be fined in a sum not exceeding \$5,000, or imprisoned for a term not exceeding one year, or both, in the discretion of the court.

Nothing in this section shall be construed to release a taxable person from liability for income tax, nor shall any contract entered into after this Act takes effect be valid in regard to any Federal income tax imposed upon a person liable to such payment.

The tax herein imposed upon annual gains, profits, and income not falling under the foregoing and not returned and paid by virtue of the foregoing shall be assessed by personal return under rules and regulations to be prescribed by the Commissioner of Internal Revenue and approved by the Secretary of the Treasury.

The provisions of this section relating to the deduction and payment of the tax at the source of income shall only apply to the normal tax hereinbefore imposed upon individuals.

F. That if any person, corporation, joint-stock company, association, or insurance company liable to make the return or pay the tax aforesaid shall refuse or neglect to make a return at the time or times hereinbefore specified in each year, such person shall be liable to a penalty of not less than \$20 nor more than \$1,000. Any person or any officer of any corporation required by law to make, render, sign, or verify any return who makes any false or fraudulent return or statement with intent to defeat or evade the assessment required by this section to be made shall be guilty of a misdemeanor, and shall be fined not exceeding \$2,000 or be imprisoned not exceeding one year, or both, at the discretion of the court, with the costs of prosecution.

G. (a) That the normal tax hereinbefore imposed upon individuals likewise shall be levied, assessed, and paid annually upon the entire net income arising or accruing from all sources during the preceding calendar year to every corporation, joint-stock company or association, and every insurance company, organized in the United States, no matter how created or organized, not including partnerships; but if organized, authorized, or existing under the laws of any foreign country, then upon the amount of net income accruing from business transacted and capital invested within the United States during such year: *Provided, however*, That nothing in this section shall apply to labor, agricultural, or horticultural organizations, or to mutual savings banks not having a capital stock represented by shares, or to fraternal beneficiary societies, orders, or associations operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system, and providing for the payment of life, sick, accident, and other benefits to the members of such societies, orders or associations and dependents of such members, nor to domestic building and loan associations, nor to cemetery companies, organized and operated exclusively for the mutual benefit of their members, nor to any corporation or association organized and operated exclusively for religious, charitable, scientific, or educational purposes, no part of the net income of which inures to the benefit of any private stockholder or individual, nor to business leagues, nor to chambers of commerce or boards of trade, not organized for profit or no part of the net income of which inures to the benefit of the private stockholder or individual; nor to any civic league or organization not organized for profit, but operated exclusively for the promotion of social welfare: *Provided further*, That there shall not be taxed under this section any income derived from any public utility or from the exercise of any essential governmental function accruing to any State, Territory, or the District of Columbia, or any political subdivision of a State, Territory, or the District of Columbia, nor any income accruing to the government of the Philippine Islands or Porto Rico, or of any political subdivision of the Philippine Islands or Porto Rico: *Provided*, That when-

ever any State, Territory, or the District of Columbia, or any political subdivision of a State or Territory, has, prior to the passage of this Act, entered in good faith into a contract with any person or corporation, the object and purpose of which is to acquire, construct, operate or maintain a public utility, no tax shall be levied under the provisions of this Act upon the income derived from the operation of such public utility, so far as the payment thereof will impose a loss or burden upon such State, Territory, or the District of Columbia, or a political subdivision of a State or Territory; but this provision is not intended to confer upon such person or corporation any financial gain or exemption or to relieve such person or corporation from the payment of a tax as provided for in this section upon the part or portion of the said income to which such person or corporation shall be entitled under such contract.

(b) Such net income shall be ascertained by deducting from the gross amount of the income of such corporation, joint-stock company or association, or insurance company, received within the year from all sources, (first) all the ordinary and necessary expenses paid within the year in the maintenance and operation of its business and properties, including rentals or other payments required to be made as a condition to the continued use or possession of property; (second) all losses actually sustained within the year and not compensated by insurance or otherwise, including a reasonable allowance for depreciation by use, wear and tear of property, if any; and in the case of mines a reasonable allowance for depletion of ores and all other natural deposits, not to exceed 5 per centum of the gross value at the mine of the output for the year for which the computation is made; and in case of insurance companies the net addition, if any, required by law to be made within the year to reserve funds and the sums other than dividends paid within the year on policy and annuity contracts: *Provided*, That mutual fire insurance companies requiring their members to make premium deposits to provide for losses and expenses shall not return as income any portion of the premium deposits returned to their policyholders, but shall return as taxable income all income received by them from all other sources plus such portions of the premium

deposits as are retained by the companies for purposes other than the payment of losses and expenses and reinsurance reserves: *Provided further*, That mutual marine insurance companies shall include in their return of gross income gross premiums collected and received by them less amounts paid for reinsurance, but shall be entitled to include in deductions from gross income amounts repaid to policyholders on account of premiums previously paid by them and interest paid upon such amounts between the ascertainment thereof and the payment thereof and life insurance companies shall not include as income in any year such portion of any actual premium received from any individual policyholder as shall have been paid back or credited to such individual policyholder, or treated as an abatement of premium of such individual policyholder, within such year; (third) the amount of interest accrued and paid within the year on its indebtedness to an amount of such indebtedness not exceeding one-half of the sum of its interest bearing indebtedness and its paid-up capital stock outstanding at the close of the year, or if no capital stock, the amount of interest paid within the year on an amount of its indebtedness not exceeding the amount of capital employed in the business at the close of the year: *Provided*, That in case of indebtedness wholly secured by collateral the subject of sale in ordinary business of such corporation, joint-stock company, or association, the total interest secured and paid by such company, corporation, or association within the year on any such indebtedness may be deducted as a part of its expense of doing business: *Provided further*, That in the case of bonds or other indebtedness, which have been issued with a guaranty that the interest payable thereon shall be free from taxation, no deduction for the payment of the tax herein imposed shall be allowed; and in the case of a bank, banking association, loan, or trust company, interest paid within the year on deposits or on moneys received for investment and secured by interest-bearing certificates of indebtedness issued by such bank, banking association, loan or trust company; (fourth) all sums paid by it within the year for taxes imposed under the authority of the United States or of any State or Territory thereof, or imposed by the Government of any foreign

country: *Provided*, That in the case of a corporation, joint-stock company or association, or insurance company, organized, authorized, or existing under the laws of any foreign country, such net income shall be ascertained by deducting from the gross amount of its income accrued within the year from business transacted and capital invested within the United States, (first) all the ordinary and necessary expenses actually paid within the year out of earnings in the maintenance and operation of its business and property within the United States, including rentals or other payments required to be made as a condition to the continued use or possession of property; (second) all losses actually sustained within the year in business conducted by it within the United States and not compensated by insurance or otherwise, including a reasonable allowance for depreciation by use, wear and tear of property, if any, and in the case of mines a reasonable allowance for depletion of ores and all other natural deposits, not to exceed 5 per centum of the gross value at the mine of the output for the year for which the computation is made; and in case of insurance companies the net addition, if any, required by law to be made within the year to reserve funds and the sums other than dividends paid within the year on policy and annuity contracts: *Provided further*, That mutual fire insurance companies requiring their members to make premium deposits to provide for losses and expenses shall not return as income any portion of the premium deposits returned to their policyholders, but shall return as taxable income all income received by them from all other sources plus such portions of the premium deposits as are retained by the companies for purposes other than the payment of losses and expenses and reinsurance reserves: *Provided further*, That mutual marine insurance companies shall include in their return of gross income gross premiums collected and received by them less amounts paid for reinsurance, but shall be entitled to include in deductions from gross income amounts repaid to policyholders on account of premiums previously paid by them, and interest paid upon such amounts between the ascertainment thereof and the payment thereof and life insurance companies shall not include as income in any year such portion of any

actual premium received from any individual policyholder as shall have been paid back or credited to such individual policyholder, or treated as an abatement of premium of such individual policyholder, within such year; (third) the amount of interest accrued and paid within the year on its indebtedness to an amount of such indebtedness not exceeding the proportion of one-half of the sum of its interest bearing indebtedness and its paid-up capital stock outstanding at the close of the year, or if no capital stock, the capital employed in the business at the close of the year which the gross amount of its income for the year from business transacted and capital invested within the United States bears to the gross amount of its income derived from all sources within and without the United States: *Provided*, That in the case of bonds or other indebtedness which have been issued with a guaranty that the interest payable thereon shall be free from taxation, no deduction for the payment of the tax herein imposed shall be allowed; (fourth) all sums paid by it within the year for taxes imposed under the authority of the United States or of any State or Territory thereof or the District of Columbia. In the case of assessment insurance companies, whether domestic or foreign, the actual deposit of sums with State or Territorial officers, pursuant to law, as additions to guarantee or reserve funds shall be treated as being payments required by law to reserve funds.

(c) The tax herein imposed shall be computed upon its entire net income accrued within each preceding calendar year ending December thirty-first: *Provided, however*, That for the year ending December thirty-first, nineteen hundred and thirteen, said tax shall be imposed upon its entire net income accrued within that portion of said year from March first to December thirty-first, both dates inclusive, to be ascertained by taking five-sixths of its entire net income for said calendar year: *Provided further*, That any corporation, joint-stock company or association, or insurance company subject to this tax may designate the last day of any month in the year as the day of the closing of its fiscal year and shall be entitled to have the tax payable by it computed upon the basis of the net income ascertained as herein provided for the year ending on the day so designated in the

year preceding the date of assessment instead of upon the basis of the net income for the calendar year preceding the date of assessment; and it shall give notice of the day it has thus designated as the closing of its fiscal year to the collector of the district in which its principal business office is located at any time not less than thirty days prior to the date upon which its annual return shall be filed. All corporations, joint-stock companies or associations, and insurance companies subject to the tax herein imposed, computing taxes upon the income of the calendar year, shall, on or before the first day of March, nineteen hundred and fourteen, and the first day of March in each year thereafter, and all corporations, joint-stock companies or associations, and insurance companies, computing taxes upon the income of a fiscal year which it may designate in the manner hereinbefore provided, shall render a like return within sixty days after the close of its said fiscal year, and within sixty days after the close of its fiscal year in each year thereafter, or in the case of a corporation, joint-stock company or association, or insurance company, organized or existing under the laws of a foreign country, in the place where its principal business is located within the United States, in such form as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe, shall render a true and accurate return under oath or affirmation of its president, vice president, or other principal officer, and its treasurer or assistant treasurer, to the collector of internal revenue for the district in which it has its principal place of business, setting forth (*first*) the total amount of its paid-up capital stock outstanding, or if no capital stock, its capital employed in business, at the close of the year; (*second*) the total amount of its bonded and other indebtedness at the close of the year; (*third*) the gross amount of its income, received during such year from all sources, and if organized under the laws of a foreign country the gross amount of its income received within the year from business transacted and capital invested within the United States; (*fourth*) the total amount of all its ordinary and necessary expenses paid out of earnings in the maintenance and operation of the business and properties of such corporation, joint-stock company or

association, or insurance company within the year, stating separately all rentals or other payments required to be made as a condition to the continued use or possession of property, and if organized under the laws of a foreign country the amount so paid in the maintenance and operation of its business within the United States; (*fifth*) the total amount of all losses actually sustained during the year and not compensated by insurance or otherwise, stating separately any amounts allowed for depreciation of property, and in case of insurance companies the net addition, if any, required by law to be made within the year to reserve funds and the sums other than dividends paid within the year on policy and annuity contracts: *Provided further*, That mutual fire insurance companies requiring their members to make premium deposits to provide for losses and expenses shall not return as income any portion of the premium deposits returned to their policyholders, but shall return as taxable income all income received by them from all other sources plus such portions of the premium deposits as are retained by the companies for purposes other than the payment of losses and expenses and reinsurance reserves: *Provided further*, That mutual marine insurance companies shall include in their return of gross income gross premiums collected and received by them less amounts paid for reinsurance, but shall be entitled to include in deductions from gross income amounts repaid to policyholders on account of premiums previously paid by them, and interest paid upon such amounts between the ascertainment thereof and the payment thereof and life insurance companies shall not include as income in any year such portion of any actual premium received from any individual policyholder as shall have been paid back or credited to such individual policyholder, or treated as an abatement of premium of such individual policyholder, within such year; and in case of a corporation, joint-stock company or association, or insurance company, organized under the laws of a foreign country, all losses actually sustained by it during the year in business conducted by it within the United States, not compensated by insurance or otherwise, stating separately any amounts allowed for depreciation of property, and in case of insurance companies the net

addition, if any, required by law to be made within the year to reserve funds and the sums other than dividends paid within the year on policy and annuity contracts: *Provided further*, That mutual fire insurance companies requiring their members to make premium deposits to provide for losses and expenses shall not return as income any portion of the premium deposits returned to their policyholders, but shall return as taxable income all income received by them from all other sources plus such portions of the premium deposits as are retained by the companies for purposes other than the payment of losses and expenses and reinsurance reserves: *Provided further*, That mutual marine insurance companies shall include in their return of gross income gross premiums collected and received by them less amounts paid for reinsurance, but shall be entitled to include in deductions from gross income amounts repaid to policyholders on account of premiums previously paid by them and interest paid upon such amounts between the ascertainment thereof and the payment thereof and life insurance companies shall not include as income in any year such portion of any actual premium received from any individual policyholder as shall have been paid back or credited to such individual policyholder, or treated as an abatement of premium of such individual policyholder, within such year; (*sixth*) the amount of interest accrued and paid within the year on its bonded or other indebtedness not exceeding one-half of the sum of its interest bearing indebtedness and its paid-up capital stock, outstanding at the close of the year, or if no capital stock, the amount of interest paid within the year on an amount of indebtedness not exceeding the amount of capital employed in the business at the close of the year, and in the case of a bank, banking association, or trust company, stating separately all interest paid by it within the year on deposits; or in case of a corporation, joint-stock company or association, or insurance company, organized under the laws of a foreign country, interest so paid on its bonded or other indebtedness to an amount of such bonded or other indebtedness not exceeding the proportion of its paid-up capital stock outstanding at the close of the year, or if no capital stock, the amount of capital employed in the business at the close of the year, which the

gross amount of its income for the year from business transacted and capital invested within the United States bears to the gross amount of its income derived from all sources within and without the United States; (*seventh*) the amount paid by it within the year for taxes imposed under the authority of the United States and separately the amount so paid by it for taxes imposed by the Government of any foreign country; (*eighth*) the net income of such corporation, joint-stock company or association, or insurance company, after making the deductions in this subsection authorized. All such returns shall as received be transmitted forthwith by the collector to the Commissioner of Internal Revenue.

All assessments shall be made and the several corporations, joint-stock companies or associations, and insurance companies shall be notified of the amount for which they are respectively liable on or before the first day of June of each successive year, and said assessment shall be paid on or before the thirtieth day of June: *Provided*, That every corporation, joint-stock company or association, and insurance company, computing taxes upon the income of the fiscal year which it may designate in the manner hereinbefore provided, shall pay the taxes due under its assessment within one hundred and twenty days after the date upon which it is required to file its list or return of income for assessment; except in cases of refusal or neglect to make such return, and in cases of false or fraudulent returns, in which cases the Commissioner of Internal Revenue shall, upon the discovery thereof, at any time within three years after said return is due, make a return upon information obtained as provided for in this section or by existing law, and the assessment made by the Commissioner of Internal Revenue thereon shall be paid by such corporation, joint-stock company or association, or insurance company immediately upon notification of the amount of such assessment; and to any sum or sums due and unpaid after the thirtieth day of June in any year, or after one hundred and twenty days from the date on which the return of income is required to be made by the taxpayer, and after ten days' notice and demand thereof by the collector, there shall be added the sum of 5 per centum on the amount of tax unpaid and inter-

est at the rate of 1 per centum per month upon said tax from the time the same becomes due.

(d) When the assessment shall be made, as provided in this section, the returns, together with any corrections thereof which may have been made by the commissioner, shall be filed in the office of the Commissioner of Internal Revenue and shall constitute public records and be open to inspection as such: *Provided*, That any and all such returns shall be open to inspection only upon the order of the President, under rules and regulations to be prescribed by the Secretary of the Treasury and approved by the President: *Provided further*, That the proper officers of any State imposing a general income tax may, upon the request of the governor thereof, have access to said returns or to an abstract thereof, showing the name and income of each such corporation, joint-stock company, association or insurance company, at such times and in such manner as the Secretary of the Treasury may prescribe.

If any of the corporations, joint-stock companies or associations, or insurance companies aforesaid, shall refuse or neglect to make a return at the time or times hereinbefore specified in each year, or shall render a false or fraudulent return, such corporation, joint-stock company or association, or insurance company shall be liable to a penalty of not exceeding \$10,000.

H. That the word "State" or "United States" when used in this section shall be construed to include any Territory, Alaska, the District of Columbia, Porto Rico, and the Philippine Islands, when such construction is necessary to carry out its provisions.

I. That sections thirty-one hundred and sixty-seven, thirty-one hundred and seventy-two, thirty-one hundred and seventy-three, and thirty-one hundred and seventy-six of the Revised Statutes of the United States as amended are hereby amended so as to read as follows:

"SEC. 3167. It shall be unlawful for any collector, deputy collector, agent, clerk, or other officer or employee of the United States to divulge or to make known in any manner whatever not provided by law to any person the operations, style of work, or apparatus of any manufacturer or producer visited by him

in the discharge of his official duties, or the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any income return by any person or corporation, or to permit any income return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law; and it shall be unlawful for any person to print or publish in any manner whatever not provided by law any income return or any part thereof or the amount or source of income, profits, losses, or expenditures appearing in any income return; and any offense against the foregoing provision shall be a misdemeanor and be punished by a fine not exceeding \$1,000 or by imprisonment not exceeding one year, or both, at the discretion of the court; and if the offender be an officer or employee of the United States he shall be dismissed from office and be incapable thereafter of holding any office under the Government.

"SEC. 3172. Every collector shall, from time to time, cause his deputies to proceed through every part of his district and inquire after and concerning all persons therein who are liable to pay any internal-revenue tax, and all persons owning or having the care and management of any objects liable to pay any tax, and to make a list of such persons and enumerate said objects.

"SEC. 3173. It shall be the duty of any person, partnership, firm, association, or corporation, made liable to any duty, special tax, or other tax imposed by law, when not otherwise provided for, in case of a special tax, on or before the thirty-first day of July in each year, in case of income tax on or before the first day of March in each year, and in other cases before the day on which the taxes accrue, to make a list or return, verified by oath or affirmation, to the collector or a deputy collector of the district where located, of the articles or objects, including the amount of annual income charged with a duty or tax, the quantity of goods, wares, and merchandise made or sold and charged with a tax, the several rates and aggregate amount, according to the forms and regulations to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, for which such person, partnership,

firm, association, or corporation is liable: *Provided*, That if any person liable to pay any duty or tax, or owning, possessing, or having the care or management of property, goods, wares, and merchandise, articles, or objects liable to pay any duty, tax, or license, shall fail to make and exhibit a list or return required by law, but shall consent to disclose the particulars of any and all the property, goods, wares, and merchandise, articles, and objects liable to pay any duty or tax, or any business or occupation liable to pay any tax as aforesaid, then, and in that case it shall be the duty of the collector or deputy collector to make such list or return, which, being distinctly read, consented to, and signed and verified by oath or affirmation by the person so owning, possessing, or having the care and management as aforesaid, may be received as the list of such person: *Provided further*, That in case no annual list or return has been rendered by such person to the collector or deputy collector as required by law, and the person shall be absent from his or her residence or place of business at the time the collector or a deputy collector shall call for the annual list or return, it shall be the duty of such collector or deputy collector to leave at such place of residence or business, with some one of suitable age and discretion, if such be present, otherwise to deposit in the nearest post office, a note or memorandum addressed to such person, requiring him or her to render to such collector or deputy collector the list or return required by law within ten days from the date of such note or memorandum, verified by oath or affirmation. And if any person, on being notified or required as aforesaid, shall refuse or neglect to render such list or return within the time required as aforesaid, or whenever any person who is required to deliver a monthly or other return of objects subject to tax fails to do so at the time required, or delivers any return which, in the opinion of the collector, is false or fraudulent, or contains any undervaluation or understatement, it shall be lawful for the collector to summon such person, or any other person having possession, custody, or care of books of account containing entries relating to the business of such person, or any other person he may deem proper, to appear before him and produce such books, at a time and place named in the sum-

mons, and to give testimony or answer interrogatories, under oath, respecting any objects liable to tax or the returns thereof. The collector may summon any person residing or found within the State in which his district lies; and when the person intended to be summoned does not reside and can not be found within such State, he may enter any collection district where such person may be found and there make the examination herein authorized. And to this end he may there exercise all the authority which he might lawfully exercise in the district for which he was commissioned.

"SEC. 3176. When any person, corporation, company, or association refuses or neglects to render any return or list required by law, or renders a false or fraudulent return or list, the collector or any deputy collector shall make, according to the best information which he can obtain, including that derived from the evidence elicited by the examination of the collector, and on his own view and information, such list or return, according to the form prescribed, of the income, property, and objects liable to tax owned or possessed or under the care or management of such person or corporation, company or association, and the Commissioner of Internal Revenue shall assess all taxes not paid by stamps, including the amount, if any, due for special tax, income or other tax, and in case of any return of a false or fraudulent list or valuation intentionally he shall add 100 per centum to such tax; and in case of a refusal or neglect, except in cases of sickness or absence, to make a list or return, or to verify the same as aforesaid, he shall add 50 per centum to such tax. In case of neglect occasioned by sickness or absence as aforesaid the collector may allow such further time for making and delivering such list or return as he may deem necessary, not exceeding thirty days. The amount so added to the tax shall be collected at the same time and in the same manner as the tax unless the neglect or falsity is discovered after the tax has been paid, in which case the amount so added shall be collected in the same manner as the tax; and the list or return so made and subscribed by such collector or deputy collector shall be held *prima facie* good and sufficient for all legal purposes."

J. That it shall be the duty of every collector of internal

revenue, to whom any payment of any taxes other than the tax represented by an adhesive stamp or other engraved stamp is made under the provisions of this section, to give to the person making such payment a full written or printed receipt, expressing the amount paid and the particular account for which such payment was made; and whenever such payment is made such collector shall, if required, give a separate receipt for each tax paid by any debtor, on account of payments made to or to be made by him to separate creditors in such form that such debtor can conveniently produce the same separately to his several creditors in satisfaction of their respective demands to the amounts specified in such receipts; and such receipts shall be sufficient evidence in favor of such debtor to justify him in withholding the amount therein expressed from his next payment to his creditor; but such creditor may, upon giving to his debtor a full written receipt, acknowledging the payment to him of whatever sum may be actually paid, and accepting the amount of tax paid as aforesaid (specifying the same) as a further satisfaction of the debt to that amount, require the surrender to him of such collector's receipt.

K. That jurisdiction is hereby conferred upon the district courts of the United States for the district within which any person summoned under this section to appear to testify or to produce books shall reside, to compel such attendance, production of books, and testimony by appropriate process.

L. That all administrative, special, and general provisions of law, including the laws in relation to the assessment, remission, collection, and refund of internal-revenue taxes not heretofore specifically repealed and not inconsistent with the provisions of this section, are hereby extended and made applicable to all the provisions of this section and to the tax herein imposed.

M. That the provisions of this section shall extend to Porto Rico and the Philippine Islands: *Provided*, That the administration of the law and the collection of the taxes imposed in Porto Rico and the Philippine Islands shall be by the appropriate internal-revenue officers of those governments, and all revenues collected in Porto Rico and the Philippine Islands thereunder shall accrue intact to the general governments,

thereof, respectively: *And provided further*, That the jurisdiction in this section conferred upon the district courts of the United States shall, so far as the Philippine Islands are concerned, be vested in the courts of the first instance of said islands: *And provided further*, That nothing in this section shall be held to exclude from the computation of the net income the compensation paid any official by the governments of the District of Columbia, Porto Rico and the Philippine Islands or the political subdivisions thereof. . . .

Section 4 (paragraph S) of the act of October 3, 1913, further provides . . . That a special excise tax with respect to the carrying on or doing of business, equivalent to 1 per centum upon their entire net income, shall be levied, assessed, and collected upon corporations, joint-stock companies or associations, and insurance companies, of the character described in section thirty-eight of the act of August fifth, nineteen hundred and nine, for the period from January first to February twenty-eighth, nineteen hundred and thirteen, both dates inclusive, which said tax shall be computed upon one-sixth of the entire net income of said corporations, joint-stock companies or associations, and insurance companies, for said year, said net income to be ascertained in accordance with the provisions of subsection G of section two of this act: *Provided further*, That the provisions of said section thirty-eight of the act of August fifth, nineteen hundred and nine, relative to the collection of the tax therein imposed shall remain in force for the collection of the excise tax herein provided, but for the year nineteen hundred and thirteen it shall not be necessary to make more than one return and assessment for all the taxes imposed herein upon said corporations, joint-stock companies or associations, and insurance companies, either by way of income or excise, which return and assessment shall be made at the times and in the manner provided in this act. . . .

ACT OF 1916.

(Approved Sept. 8, 1916.)

PART I.—INDIVIDUALS.

SEC. 1. (a) That there shall be levied, assessed, collected, and paid annually upon the entire net income received in the preceding calendar year from all sources by every individual, a citizen or resident of the United States, a tax of two per centum upon such income; and a like tax shall be levied, assessed, collected, and paid annually upon the entire net income received in the preceding calendar year from all sources within the United States by every individual, a nonresident alien, including interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise.

(b) In addition to the income tax imposed by subdivision (a) of this section (herein referred to as the normal tax) there shall be levied, assessed, collected, and paid upon the total net income of every individual, or, in the case of a nonresident alien, the total net income received from all sources within the United States, an additional income tax (herein referred to as the additional tax) of one per centum per annum upon the amount by which such total net income exceeds \$20,000 and does not exceed \$40,000, two per centum per annum upon the amount by which such total net income exceeds \$40,000 and does not exceed \$60,000, three per centum per annum upon the amount by which such total net income exceeds \$60,000 and does not exceed \$80,000, four per centum per annum upon the amount by which such total net income exceeds \$80,000 and does not exceed \$100,000, five per centum per annum upon the amount by which such total net income exceeds \$100,000 and does not exceed \$150,000, six per centum per annum upon the amount by which such total net income exceeds \$150,000 and does not exceed \$200,000, seven per centum per annum upon the amount by which such total net income exceeds \$200,000 and does not exceed \$250,000, eight per centum per annum upon the amount

by which such total net income exceeds \$250,000 and does not exceed \$300,000, nine per centum per annum upon the amount by which such total net income exceeds \$300,000 and does not exceed \$500,000, ten per centum per annum upon the amount by which such total net income exceeds \$500,000, and does not exceed \$1,000,000, eleven per centum per annum upon the amount by which such total net income exceeds \$1,000,000 and does not exceed \$1,500,000, twelve per centum per annum upon the amount by which such total net income exceeds \$1,500,000 and does not exceed \$2,000,000, and thirteen per centum per annum upon the amount by which such total net income exceeds \$2,000,000.

For the purpose of the additional tax there shall be included as income the income derived from dividends on the capital stock or from the net earnings of any corporation, joint-stock company or association, or insurance company, except that in the case of nonresident aliens such income derived from sources without the United States shall not be included.

All the provisions of this title relating to the normal tax on individuals, so far as they are applicable and are not inconsistent with this subdivision and section three, shall apply to the imposition, levy, assessment, and collection of the additional tax imposed under this subdivision.

(c) The foregoing normal and additional tax rates shall apply to the entire net income, except as hereinafter provided, received by every taxable person in the calendar year nineteen hundred and sixteen and in each calendar year thereafter.

INCOME DEFINED.

SEC. 2. (a) That, subject only to such exemptions and deductions as are hereinafter allowed, the net income of a taxable person shall include gains, profits, and income derived from salaries, wages, or compensation for personal service of whatever kind and in whatever form paid, or from professions, vocations, businesses, trade, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in real or personal property, also from inter-

est, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever: *Provided*, That the term "dividends" as used in this title shall be held to mean any distribution made or ordered to be made by a corporation, joint-stock company, association, or insurance company, out of its earnings or profits accrued since March first, nineteen hundred and thirteen, and payable to its shareholders, whether in cash or in stock of the corporation, joint-stock company, association, or insurance company, which stock dividend shall be considered income, to the amount of its cash value.

(b) Income received by estates of deceased persons during the period of administration or settlement of the estate, shall be subject to the normal and additional tax and taxed to their estates, and also such income of estates or any kind of property held in trust, including such income accumulated in trust for the benefit of unborn or unascertained persons, or persons with contingent interests, and income held for future distribution under the terms of the will or trust shall be likewise taxed, the tax in each instance, except when the income is returned for the purpose of the tax by the beneficiary, to be assessed to the executor, administrator, or trustee, as the case may be: *Provided*, That where the income is to be distributed annually or regularly between existing heirs or legatees, or beneficiaries the rate of tax and method of computing the same shall be based in each case upon the amount of the individual share to be distributed.

Such trustees, executors, administrators, and other fiduciaries are hereby indemnified against the claims or demands of every beneficiary for all payments of taxes which they shall be required to make under the provisions of this title, and they shall have credit for the amount of such payments against the beneficiary or principal in any accounting which they make as such trustees or other fiduciaries.

(c) For the purpose of ascertaining the gain derived from the sale or other disposition of property, real, personal, or mixed, acquired before March first, nineteen hundred and thirteen, the fair market price or value of such property as of March first,

nineteen hundred and thirteen, shall be the basis for determining the amount of such gain derived.

ADDITIONAL TAX INCLUDES UNDISTRIBUTED PROFITS.

SEC. 3. For the purpose of the additional tax, the taxable income of any individual shall include the share to which he would be entitled of the gains and profits, if divided or distributed, whether divided or distributed or not, of all corporations, joint-stock companies or associations, or insurance companies, however created or organized, formed or fraudulently availed of for the purpose of preventing the imposition of such tax through the medium of permitting such gains and profits to accumulate instead of being divided or distributed; and the fact that any such corporation, joint-stock company or association, or insurance company, is a mere holding company, or that the gains and profits are permitted to accumulate beyond the reasonable needs of the business, shall be prima facie evidence of a fraudulent purpose to escape such tax; but the fact that the gains and profits are in any case permitted to accumulate and become surplus shall not be construed as evidence of a purpose to escape the said tax in such case unless the Secretary of the Treasury shall certify that in his opinion such accumulation is unreasonable for the purposes of the business. When requested by the Commissioner of Internal Revenue, or any district collector of internal revenue, such corporation, joint-stock company or association, or insurance company shall forward to him a correct statement of such gains and profits and the names and addresses of the individuals or shareholders who would be entitled to the same if divided or distributed.

INCOME EXEMPT FROM LAW.

SEC. 4. The following income shall be exempt from the provisions of this title:

The proceeds of life insurance policies paid to individual beneficiaries upon the death of the insured; the amount received by the insured, as a return of premium or premiums paid by him

under life insurance, endowment, or annuity contracts, either during the term or at the maturity of the term mentioned in the contract or upon the surrender of the contract; the value of property acquired by gift, bequest, devise, or descent (but the income from such property shall be included as income); interest upon the obligations of a State or any political subdivision thereof or upon the obligations of the United States or its possessions or securities issued under the provisions of the Federal farm loan Act of July seventeenth, nineteen hundred and sixteen; the compensation of the present President of the United States during the term for which he has been elected, and the judges of the Supreme and inferior courts of the United States now in office, and the compensation of all officers and employees of a State, or any political subdivision thereof, except when such compensation is paid by the United States Government.

DEDUCTIONS ALLOWED.

SEC. 5. That in computing net income in the case of a citizen or resident of the United States—

(a) For the purpose of the tax there shall be allowed as deductions—

First. The necessary expenses actually paid in carrying on any business or trade, not including personal, living, or family expenses;

Second. All interest paid within the year on his indebtedness;

Third. Taxes paid within the year imposed by the authority of the United States, or its Territories, or possessions, or any foreign country, or under the authority of any State, county, school district, or municipality, or other taxing subdivision of any State, not including those assessed against local benefits;

Fourth. Losses actually sustained during the year, incurred in his business or trade, or arising from fires, storms, shipwreck, or other casualty, and from theft, when such losses are not compensated for by insurance or otherwise: *Provided*, That for the purpose of ascertaining the loss sustained from the sale or other disposition of property, real, personal, or mixed, acquired before March first, nineteen hundred and thirteen, the fair market

price or value of such property as of March first, nineteen hundred and thirteen, shall be the basis for determining the amount of such loss sustained;

Fifth. In transactions entered into for profit but not connected with his business or trade, the losses actually sustained therein during the year to an amount not exceeding the profits arising therefrom;

Sixth. Debts due to the taxpayer actually ascertained to be worthless and charged off within the year;

Seventh. A reasonable allowance for the exhaustion, wear and tear of property arising out of its use or employment in the business or trade;

Eighth. (a) In the case of oil and gas wells a reasonable allowance for actual reduction in flow and production to be ascertained not by the flush flow, but by the settled production or regular flow; (b) in the case of mines a reasonable allowance for depletion thereof not to exceed the market value in the mine of the product thereof, which has been mined and sold during the year for which the return and computation are made, such reasonable allowance to be made in the case of both (a) and (b) under rules and regulations to be prescribed by the Secretary of the Treasury: *Provided*, That when the allowances authorized in (a) and (b) shall equal the capital originally invested, or in case of purchase made prior to March first, nineteen hundred and thirteen, the fair market value as of that date, no further allowance shall be made. No deduction shall be allowed for any amount paid out for new buildings, permanent improvements, or betterments, made to increase the value of any property or estate, and no deduction shall be made for any amount of expense of restoring property or making good the exhaustion thereof for which an allowance is or has been made.

CREDITS ALLOWED.

(b) For the purpose of the normal tax only, the income embraced in a personal return shall be credited with the amount received as dividends upon the stock or from the net earnings of any corporation, joint-stock company or association, trustee, or

insurance company, which is taxable upon its net income as hereinafter provided;

(c) A like credit shall be allowed as to the amount of income, the normal tax upon which has been paid or withheld for payment at the source of the income under the provisions of this title.

NONRESIDENT ALIENS.

SEC. 6. That in computing net income in the case of a non-resident alien—

(a) For the purpose of the tax there shall be allowed as deductions—

First. The necessary expenses actually paid in carrying on any business or trade conducted by him within the United States, not including personal, living, or family expenses;

Second. The proportion of all interest paid within the year by such person on his indebtedness which the gross amount of his income for the year derived from sources within the United States bears to the gross amount of his income for the year derived from all sources within and without the United States, but this deduction shall be allowed only if such person includes in the return required by section eight all the information necessary for its calculation;

Third. Taxes paid within the year imposed by the authority of the United States, or its Territories, or possessions, or under the authority of any State, county, school district, or municipality, or other taxing subdivision of any State, paid within the United States, not including those assessed against local benefits;

Fourth. Losses actually sustained during the year, incurred in business or trade conducted by him within the United States, and losses of property within the United States arising from fires, storms, shipwreck, or other casualty, and from theft, when such losses are not compensated for by insurance or otherwise: *Provided*, That for the purpose of ascertaining the amount of such loss or losses sustained in trade, or speculative transactions not in trade, from the same or any kind of property acquired before March first, nineteen hundred and thirteen, the fair

market price or value of such property as of March first, nineteen hundred and thirteen, shall be the basis for determining the amount of such loss or losses sustained;

Fifth. In transactions entered into for profit but not connected with his business or trade, the losses actually sustained therein during the year to an amount not exceeding the profits arising therefrom in the United States;

Sixth. Debts arising in the course of business or trade conducted by him within the United States due to the taxpayer actually ascertained to be worthless and charged off within the year;

Seventh. A reasonable allowance for the exhaustion, wear and tear of property within the United States arising out of its use or employment in the business or trade; (a) in the case of oil and gas wells a reasonable allowance for actual reduction in flow and production to be ascertained not by the flush flow, but by the settled production or regular flow; (b) in the case of mines a reasonable allowance for depletion thereof not to exceed the market value in the mine of the product thereof which has been mined and sold during the year for which the return and computation are made, such reasonable allowance to be made in the case of both (a) and (b) under rules and regulations to be prescribed by the Secretary of the Treasury: *Provided*, That when the allowance authorized in (a) and (b) shall equal the capital originally invested, or in case of purchase made prior to March first, nineteen hundred and thirteen, the fair market value as of that date, no further allowance shall be made. No deduction shall be allowed for any amount paid out for new buildings, permanent improvements, or betterments, made to increase the value of any property or estate, and no deduction shall be made for any amount of expense of restoring property or making good the exhaustion thereof for which an allowance is or has been made.

(b) There shall also be allowed the credits specified by subdivisions (b) and (c) of section five.

PERSONAL EXEMPTION.

SEC. 7. (a) That for the purpose of the normal tax only, there shall be allowed as an exemption in the nature of a deduction from the amount of the net income of each of said persons, ascertained as provided herein, the sum of \$3,000, plus \$1,000 additional if the person making the return be a head of a family or a married man with a wife living with him, or plus the sum of \$1,000 additional if the person making the return be a married woman with a husband living with her; but in no event shall this additional exemption of \$1,000 be deducted by both a husband and a wife: *Provided*, That only one deduction of \$4,000 shall be made from the aggregate income of both husband and wife when living together: *Provided further*, That guardians or trustees shall be allowed to make this personal exemption as to income derived from the property of which such guardian or trustee has charge in favor of each ward or cestui que trust: *Provided further*, That in no event shall a ward or cestui que trust be allowed a greater personal exemption than \$3,000, or, if married, \$4,000, as provided in this paragraph, from the amount of net income received from all sources. There shall also be allowed an exemption from the amount of the net income of estates of deceased persons during the period of administration or settlement, and of trust or other estates the income of which is not distributed annually or regularly under the provisions of paragraph (b), section two, the sum of \$3,000, including such deductions as are allowed under section five.

(b) A nonresident alien individual may receive the benefit of the exemption provided for in this section only by filing or causing to be filed with the collector of internal revenue a true and accurate return of his total income, received from all sources, corporate or otherwise, in the United States, in the manner prescribed by this title; and in case of his failure to file such return the collector shall collect the tax on such income, and all property belonging to such nonresident alien individual shall be liable to distraint for the tax.

RETURNS.

SEC. 8. (a) The tax shall be computed upon the net income, as thus ascertained, of each person subject thereto, received in each preceding calendar year ending December thirty-first.

(b) On or before the first day of March, nineteen hundred and seventeen, and the first day of March in each year thereafter, a true and accurate return under oath shall be made by each person of lawful age, except as hereinafter provided, having a net income of \$3,000 or over for the taxable year to the collector of internal revenue for the district in which such person has his legal residence or principal place of business, or if there be no legal residence or place of business in the United States, then with the collector of internal revenue at Baltimore, Maryland, in such form as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe, setting forth specifically the gross amount of income from all separate sources, and from the total thereof deducting the aggregate items of allowances herein authorized: *Provided*, That the Commissioner of Internal Revenue shall have authority to grant a reasonable extension of time, in meritorious cases, for filing returns of income by persons residing or traveling abroad who are required to make and file returns of income and who are unable to file said returns on or before March first of each year: *Provided further*, That the aforesaid return may be made by an agent when by reason of illness, absence, or nonresidence the person liable for said return is unable to make and render the same, the agent assuming the responsibility of making the return and incurring penalties provided for erroneous, false, or fraudulent return.

(c) Guardians, trustees, executors, administrators, receivers, conservators, and all persons, corporations, or associations acting in any fiduciary capacity, shall make and render a return of the income of the person, trust, or estate for whom or which they act, and be subject to all the provisions of this title which apply to individuals. Such fiduciary shall make oath that he has sufficient knowledge of the affairs of such person, trust, or estate to enable him to make such return and that the same is, to the

best of his knowledge and belief, true and correct, and be subject to all the provisions of this title which apply to individuals: *Provided*, That a return made by one of two or more joint fiduciaries filed in the district where such fiduciary resides, under such regulations as the Secretary of the Treasury may prescribe, shall be a sufficient compliance with the requirements of this paragraph.

(d) All persons, firms, companies, copartnerships, corporations, joint-stock companies, or associations, and insurance companies, except as hereinafter provided, in whatever capacity acting, having the control, receipt, disposal, or payment of fixed or determinable annual or periodical gains, profits, and income of another individual subject to tax, shall in behalf of such person deduct and withhold from the payment an amount equivalent to the normal tax upon the same and make and render a return, as aforesaid, but separate and distinct, of the portion of the income of each person from which the normal tax has been thus withheld, and containing also the name and address of such person or stating that the name and address or the address, as the case may be, are unknown: *Provided*, That the provision requiring the normal tax of individuals to be deducted and withheld at the source of the income shall not be construed to require the withholding of such tax according to the two per centum normal tax rate herein prescribed until on and after January first, nineteen hundred and seventeen, and the law existing at the time of the passage of this Act shall govern the amount withheld or to be withheld at the source until January first, nineteen hundred and seventeen.

That in either case mentioned in subdivisions (c) and (d) of this section no return of income not exceeding \$3,000 shall be required, except as in this title provided.

(e) Persons carrying on business in partnership shall be liable for income tax only in their individual capacity, and the share of the profits of the partnership to which any taxable partner would be entitled if the same were divided, whether divided or otherwise, shall be returned for taxation and the tax paid under the provisions of this title: *Provided*, That from the net distributive interests on which the individual members shall be liable for tax,

normal and additional, there shall be excluded their proportionate shares received from interest on the obligations of a State or any political or taxing subdivision thereof, and upon the obligations of the United States and its possessions, and all taxes paid to the United States or to any possession thereof, or to any State, county, or taxing subdivision of a State, and that for the purpose of computing the normal tax there shall be allowed a credit, as provided by section five, subdivision (b), for their proportionate share of the profits derived from dividends. And such partnership, when requested by the Commissioner of Internal Revenue, or any district collector, shall render a correct return of the earnings, profits, and income of the partnership, except income exempt under section four of this Act, setting forth the item of the gross income and the deductions and credits allowed by this title, and the names and addresses of the individuals who would be entitled to the net earnings, profits, and income, if distributed.

(f) In every return shall be included the income derived from dividends on the capital stock or from the net earnings of any corporation, joint-stock company or association, or insurance company, except that in the case of nonresident aliens such income derived from sources without the United States shall not be included.

(g) An individual keeping accounts upon any basis other than that of actual receipts and disbursements, unless such other basis does not clearly reflect his income, may, subject to regulations made by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, make his return upon the basis upon which his accounts are kept, in which case the tax shall be computed upon his income as so returned.

ASSESSMENT AND ADMINISTRATION.

SEC. 9. (a) That all assessments shall be made by the Commissioner of Internal Revenue and all persons shall be notified of the amount for which they are respectively liable on or before the first day of June of each successive year, and said amounts shall be paid on or before the fifteenth day of June, except in

cases of refusal or neglect to make such return and in cases of erroneous, false, or fraudulent returns, in which cases the Commissioner of Internal Revenue shall, upon the discovery thereof, at any time within three years after said return is due, or has been made, make a return upon information obtained as provided for in this title or by existing law, or require the necessary corrections to be made, and the assessment made by the Commissioner of Internal Revenue thereon shall be paid by such person or persons immediately upon notification of the amount of such assessment; and to any sum or sums due and unpaid after the fifteenth day of June in any year, and for ten days after notice and demand thereof by the collector, there shall be added the sum of five per centum on the amount of tax unpaid, and interest at the rate of one per centum per month upon said tax from the time the same became due, except from the estates of insane, deceased, or insolvent persons.

(b) All persons, firms, copartnerships, companies, corporations, joint-stock companies, or associations, and insurance companies, in whatever capacity acting, including lessees or mortgagors of real or personal property, trustees acting in any trust capacity, executors, administrators, receivers, conservators, employers, and all officers and employees of the United States having the control, receipt, custody, disposal, or payment of interest, rent, salaries, wages, premiums, annuities, compensation, remuneration, emoluments, or other fixed or determinable annual or periodical gains, profits, and income of another person, exceeding \$3,000 for any taxable year, other than income derived from dividends on capital stock, or from the net earnings of corporations and joint-stock companies or associations, or insurance companies, the income of which is taxable under this title, who are required to make and render a return in behalf of another, as provided herein, to the collector of his, her, or its district, are hereby authorized and required to deduct and withhold from such annual or periodical gains, profits, and income such sum as will be sufficient to pay the normal tax imposed thereon by this title, and shall pay the amount withheld to the officer of the United States Government authorized to receive the same; and they are each hereby made personally liable for

such tax, and they are each hereby indemnified against every person, corporation, association, or demand whatsoever for all payments which they shall make in pursuance and by virtue of this title.

In all cases where the income tax of a person is withheld and deducted and paid or to be paid at the source, such person shall not receive the benefit of the personal exemption allowed in section seven of this title except by an application for refund of the tax unless he shall, not less than thirty days prior to the day on which the return of his income is due, file with the person who is required to withhold and pay tax for him a signed notice in writing claiming the benefit of such exemption, and thereupon no tax shall be withheld upon the amount of such exemption: *Provided*, That if any person for the purpose of obtaining any allowance or reduction by virtue of a claim for such exemption, either for himself or for any other person, knowingly makes any false statement or false or fraudulent representation, he shall be liable to a penalty of not exceeding \$300.

And where the income tax is paid or to be paid at the source, no person shall be allowed the benefit of any deduction provided for in sections five or six of this title unless he shall, not less than thirty days prior to the day on which the return of his income is due, either (1) file with the person who is required to withhold and pay tax for him a true and correct return of his gains, profits, and income from all other sources, and also the deductions asked for, and the showing thus made shall then become a part of the return to be made in his behalf by the person required to withhold and pay the tax, or (2) likewise make application for deductions to the collector of the district in which return is made or to be made for him: *Provided*, That when any amount allowable as a deduction is known at the time of receipt of fixed annual or periodical income by an individual subject to tax, he may file with the person, firm, or corporation making the payment a certificate, under penalty for false claim, and in such form as shall be prescribed by the Commissioner of Internal Revenue, stating the amount of such deduction and making a claim for an allowance of the same against the amount of tax otherwise required to be deducted and withheld at the source of

the income, and such certificate shall likewise become a part of the return to be made in his behalf.

If such person is absent from the United States, or is unable owing to serious illness to make the return and application above provided for, the return and application may be made by an agent, he making oath that he has sufficient knowledge of the affairs and property of his principal to enable him to make a full and complete return, and that the return and application made by him are full and complete.

(c) The amount of the normal tax hereinbefore imposed shall be deducted and withheld from fixed or determinable annual or periodical gains, profits, and income derived from interest upon bonds and mortgages, or deeds of trust or other similar obligations of corporations, joint-stock companies, associations, and insurance companies, whether payable annually or at shorter or longer periods, although such interest does not amount to \$3,000, subject to the provisions of this title requiring the tax to be withheld at the source and deducted from annual income and returned and paid to the Government.

(d) And likewise the amount of such tax shall be deducted and withheld from coupons, checks, or bills of exchange for or in payment of interest upon bonds of foreign countries and upon foreign mortgages or like obligations (not payable in the United States), and also from coupons, checks, or bills of exchange for or in payment of any dividends upon the stock or interest upon the obligations of foreign corporations, associations, and insurance companies engaged in business in foreign countries.

And the tax in such cases shall be withheld, deducted, and returned for and in behalf of any person subject to the tax hereinbefore imposed, although such interest or dividends do not exceed \$3,000, by (1) any banker or person who shall sell or otherwise realize coupons, checks, or bills of exchange drawn or made in payment of any such interest or dividends (not payable in the United States), and (2) any person who shall obtain payment (not in the United States), in behalf of another of such dividends and interest by means of coupons, checks, or bills of exchange, and also (3) any dealer in such coupons who shall purchase the same for any such dividends or interest (not pay-

able in the United States), otherwise than from a banker or another dealer in such coupons.

(e) Where the tax is withheld at the source, the benefit of the exemption and the deductions allowable under this title may be had by complying with the foregoing provisions of this section.

(f) All persons, firms, or corporations undertaking as a matter of business or for profit the collection of foreign payments of such interest or dividends by means of coupons, checks, or bills of exchange shall obtain a license from the Commissioner of Internal Revenue, and shall be subject to such regulations enabling the Government to ascertain and verify the due withholding and payment of the income tax required to be withheld and paid as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe; and any person who shall knowingly undertake to collect such payments as aforesaid without having obtained a license therefor, or without complying with such regulations, shall be deemed guilty of a misdemeanor and for each offense be fined in a sum not exceeding \$5,000, or imprisoned for a term not exceeding one year, or both, in the discretion of the court.

(g) The tax herein imposed upon gains, profits, and income not falling under the foregoing and not returned and paid by virtue of the foregoing shall be assessed by personal return under rules and regulations to be prescribed by the Commissioner of Internal Revenue and approved by the Secretary of the Treasury. The intent and purpose of this title is that all gains, profits, and income of a taxable class, as defined by this title, shall be charged and assessed with the corresponding tax, normal and additional, prescribed by this title, and said tax shall be paid by the owner of such income, or the proper representative having the receipt, custody, control, or disposal of the same. For the purpose of this title ownership or liability shall be determined as of the year for which a return is required to be rendered.

The provisions of this title relating to the deduction and payment of the tax at the source of income shall only apply to the normal tax hereinbefore imposed upon individuals.

PART II.—CORPORATIONS.

SEC. 10. That there shall be levied, assessed, collected, and paid annually upon the total net income received in the preceding calendar year from all sources by every corporation, joint-stock company or association, or insurance company, organized in the United States, no matter how created or organized but not including partnerships, a tax of two per centum upon such income; and a like tax shall be levied, assessed, collected, and paid annually upon the total net income received in the preceding calendar year from all sources within the United States by every corporation, joint-stock company or association, or insurance company organized, authorized, or existing under the laws of any foreign country, including interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise, and including the income derived from dividends on capital stock or from net earnings of resident corporations, joint-stock companies or associations, or insurance companies whose net income is taxable under this title: *Provided*, That the term "dividends" as used in this title shall be held to mean any distribution made or ordered to be made by a corporation, joint-stock company, association, or insurance company, out of its earnings or profits accrued since March first, nineteen hundred and thirteen, and payable to its shareholders, whether in cash or in stock of the corporation, joint-stock company, association, or insurance company, which stock dividend shall be considered income, to the amount of its cash value.

The foregoing tax rate shall apply to the total net income received by every taxable corporation, joint-stock company or association, or insurance company in the calendar year nineteen hundred and sixteen and in each year thereafter, except that if it has fixed its own fiscal year under the provisions of existing law, the foregoing rate shall apply to the proportion of the total net income returned for the fiscal year ending prior to December thirty-first, nineteen hundred and sixteen, which the period between January first, nineteen hundred and sixteen, and the end of such fiscal year bears to the whole of such fiscal year, and the rate fixed in Section II of the Act approved October third,

nineteen hundred and thirteen, entitled "An Act to reduce tariff duties and to provide revenue for the Government, and for other purposes," shall apply to the remaining portion of the total net income returned for such fiscal year.

For the purpose of ascertaining the gain derived or loss sustained from the sale or other disposition by a corporation, joint-stock company or association, or insurance company, of property, real, personal, or mixed, acquired before March first, nineteen hundred and thirteen, the fair market price or value of such property as of March first, nineteen hundred and thirteen, shall be the basis for determining the amount of such gain derived or loss sustained.

CONDITIONAL AND OTHER EXEMPTIONS.

SEC. 11. (a) That there shall not be taxed under this title any income received by any—

First. Labor, agricultural, or horticultural organization;

Second. Mutual savings bank not having a capital stock represented by shares;

Third. Fraternal beneficiary society, order, or association, operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system, and providing for the payment of life, sick, accident, or other benefits to the members of such society, order, or association or their dependents;

Fourth. Domestic building and loan association and coöperative banks without capital stock organized and operated for mutual purposes and without profit;

Fifth. Cemetery company owned and operated exclusively for the benefit of its members;

Sixth. Corporation or association organized and operated exclusively for religious, charitable, scientific, or educational purposes, no part of the net income of which inures to the benefit of any private stockholder or individual;

Seventh. Business league, chamber of commerce, or board of trade, not organized for profit and no part of the net income of which inures to the benefit of any private stockholder or individual;

Eighth. Civic league or organization not organized for profit but operated exclusively for the promotion of social welfare;

Ninth. Club organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes, no part of the net income of which inures to the benefit of any private stockholder or member;

Tenth. Farmers' or other mutual hail, cyclone, or fire insurance company, mutual ditch or irrigation company, mutual or coöperative telephone company, or like organization of a purely local character, the income of which consists solely of assessments, dues, and fees collected from members for the sole purpose of meeting its expenses;

Eleventh. Farmers', fruit growers', or like association, organized and operated as a sales agent for the purpose of marketing the products of its members and turning back to them the proceeds of sales, less the necessary selling expenses, on the basis of the quantity of produce furnished by them;

Twelfth. Corporation or association organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization which itself is exempt from the tax imposed by this title; or

Thirteenth. Federal land banks and national farm-loan associations as provided in section twenty-six of the Act approved July seventeenth, nineteen hundred and sixteen, entitled "An Act to provide capital for agricultural development, to create standard forms of investment based upon farm mortgage, to equalize rates of interest upon farm loans, to furnish a market for United States bonds, to create Government depositaries and financial agents for the United States, and for other purposes."

Fourteenth. Joint-stock land banks as to income derived from bonds or debentures of other joint-stock land banks or any Federal land bank belonging to such joint-stock land bank.

(b) There shall not be taxed under this title any income derived from any public utility or from the exercise of any essential governmental function accruing to any State, Territory, or the District of Columbia, or any political subdivision of a State or Territory, nor any income accruing to the government of the

Philippine Islands or Porto Rico, or of any political subdivision of the Philippine Islands or Porto Rico: *Provided*, That whenever any State, Territory, or the District of Columbia, or any political subdivision of a State or Territory, has, prior to the passage of this title, entered in good faith into a contract with any person or corporation, the object and purpose of which is to acquire, construct, operate, or maintain a public utility, no tax shall be levied under the provisions of this title upon the income derived from the operation of such public utility, so far as the payment thereof will impose a loss or burden upon such State, Territory, or the District of Columbia, or a political subdivision of a State or Territory; but this provision is not intended to confer upon such person or corporation any financial gain or exemption or to relieve such person or corporation from the payment of a tax as provided for in this title upon the part or portion of the said income to which such person or corporation shall be entitled under such contract.

DEDUCTIONS.

SEC. 12. (a) In the case of a corporation, joint-stock company or association, or insurance company, organized in the United States, such net income shall be ascertained by deducting from the gross amount of its income received within the year from all sources—

First. All the ordinary and necessary expenses paid within the year in the maintenance and operation of its business and properties, including rentals or other payments required to be made as a condition to the continued use or possession of property to which the corporation has not taken or is not taking title, or in which it has no equity.

Second. All losses actually sustained and charged off within the year and not compensated by insurance or otherwise, including a reasonable allowance for the exhaustion, wear and tear of property arising out of its use or employment in the business or trade; (a) in the case of oil and gas wells a reasonable allowance for actual reduction in flow and production to be ascertained not by the flush flow, but by the settled production or

regular flow; (b) in the case of mines a reasonable allowance for depletion thereof not to exceed the market value in the mine of the product thereof which has been mined and sold during the year for which the return and computation are made, such reasonable allowance to be made in the case of both (a) and (b) under rules and regulations to be prescribed by the Secretary of the Treasury: *Provided*, That when the allowance authorized in (a) and (b) shall equal the capital originally invested, or in case of purchase made prior to March first, nineteen hundred and thirteen, the fair market value as of that date, no further allowance shall be made; and (c) in the case of insurance companies, the net addition, if any, required by law to be made within the year to reserve funds and the sums other than dividends paid within the year on policy and annuity contracts: *Provided*, That no deduction shall be allowed for any amount paid out for new buildings, permanent improvements, or betterments made to increase the value of any property or estate, and no deduction shall be made for any amount of expense of restoring property or making good the exhaustion thereof for which an allowance is or has been made: *Provided further*, That mutual fire and mutual employers' liability and mutual workmen's compensation and mutual casualty insurance companies requiring their members to make premium deposits to provide for losses and expenses shall not return as income any portion of the premium deposits returned to their policyholders, but shall return as taxable income all income received by them from all other sources plus such portions of the premium deposits as are retained by the companies for purposes other than the payment of losses and expenses and reinsurance reserves: *Provided further*, That mutual marine insurance companies shall include in their return of gross income gross premiums collected and received by them less amounts paid for reinsurance, but shall be entitled to include in deductions from gross income amounts repaid to policyholders on account of premiums previously paid by them and interest paid upon such amounts between the ascertainment thereof and the payment thereof, and life insurance companies shall not include as income in any year such portion of any actual premium received from any individual policyholder as shall have

been paid back or credited to such individual policyholder, or treated as an abatement of premium of such individual policyholder, within such year;

Third. The amount of interest paid within the year on its indebtedness to an amount of such indebtedness not in excess of the sum of (a) the entire amount of the paid-up capital stock outstanding at the close of the year, or, if no capital stock, the entire amount of capital employed in the business at the close of the year, and (b) one-half of its interest-bearing indebtedness then outstanding: *Provided*, That for the purpose of this title preferred capital stock shall not be considered interest-bearing indebtedness, and interest or dividends paid upon this stock shall not be deductible from gross income: *Provided further*, That in cases wherein shares of capital stock are issued without par or nominal value, the amount of paid-up capital stock, within the meaning of this section, as represented by such shares, will be the amount of cash, or its equivalent, paid or transferred to the corporation as a consideration for such shares: *Provided further*, That in the case of indebtedness wholly secured by property collateral, tangible or intangible, the subject of sale or hypothecation in the ordinary business of such corporation, joint-stock company or association as a dealer only in the property constituting such collateral, or in loaning the funds thereby procured, the total interest paid by such corporation, company, or association within the year on any such indebtedness may be deducted as a part of its expenses of doing business, but interest on such indebtedness shall only be deductible on an amount of such indebtedness not in excess of the actual value of such property collateral: *Provided further*, That in the case of bonds or other indebtedness, which have been issued with a guaranty that the interest payable thereon shall be free from taxation, no deduction for the payment of the tax herein imposed, or any other tax paid pursuant to such guaranty, shall be allowed; and in the case of a bank, banking association, loan or trust company, interest paid within the year on deposits or on moneys received for investment and secured by interest-bearing certificates of indebtedness issued by such bank, banking association, loan or trust company;

Fourth. Taxes paid within the year imposed by the authority of the United States, or its Territories, or possessions, or any foreign country, or under the authority of any State, county, school district, or municipality, or other taxing subdivision of any State, not including those assessed against local benefits.

(b) In the case of a corporation, joint-stock company or association, or insurance company, organized, authorized, or existing under the laws of any foreign country, such net income shall be ascertained by deducting from the gross amount of its income received within the year from all sources within the United States—

First. All the ordinary and necessary expenses actually paid within the year out of earnings in the maintenance and operation of its business and property within the United States, including rentals or other payments required to be made as a condition to the continued use or possession of property to which the corporation has not taken or is not taking title, or in which it has no equity.

Second. All losses actually sustained within the year in business or trade conducted by it within the United States and not compensated by insurance or otherwise, including a reasonable allowance for the exhaustion, wear and tear of property arising out of its use or employment in the business or trade; (a) and in the case (a) of oil and gas wells a reasonable allowance for actual reduction in flow and production to be ascertained not by the flush flow, but by the settled production or regular flow; (b) in the case of mines a reasonable allowance for depletion thereof not to exceed the market value in the mine of the product thereof which has been mined and sold during the year for which the return and computation are made, such reasonable allowance to be made in the case of both (a) and (b) under rules and regulations to be prescribed by the Secretary of the Treasury: *Provided*, That when the allowance, authorized in (a) and (b) shall equal the capital originally invested, or in case of purchase made prior to March first, nineteen hundred and thirteen, the fair market value as of that date, no further allowance shall be made; and (c) in the case of insurance companies, the net addition, if any, required by law to be made within the year to

reserve funds and the sums other than dividends paid within the year on policy and annuity contracts: *Provided*, That no deduction shall be allowed for any amount paid out for new buildings, permanent improvements, or betterments, made to increase the value of any property or estate, and no deduction shall be made for any amount of expense of restoring property or making good the exhaustion thereof for which an allowance is or has been made: *Provided further*, That mutual fire and mutual employers' liability and mutual workmen's compensation and mutual casualty insurance companies requiring their members to make premium deposits to provide for losses and expenses shall not return as income any portion of the premium deposits returned to their policyholders, but shall return as taxable income all income received by them from all other sources plus such portions of the premium deposits as are retained by the companies for purposes other than the payment of losses and expenses and reinsurance reserves: *Provided further*, That mutual marine insurance companies shall include in their return of gross income gross premiums collected and received by them less amounts paid for reinsurance, but shall be entitled to include in deductions from gross income amounts repaid to policyholders on account of premiums previously paid by them, and interest paid upon such amounts between the ascertainment thereof and the payment thereof, and life insurance companies shall not include as income in any year such portion of any actual premium received from any individual policyholder as shall have been paid back or credited to such individual policyholder, or treated as an abatement of premium of such individual policyholder, within such year;

Third. The amount of interest paid within the year on its indebtedness to an amount of such indebtedness not in excess of the proportion of the sum of (a) the entire amount of the paid-up capital stock outstanding at the close of the year, or, if no capital stock, the entire amount of the capital employed in the business at the close of the year, and (b) one-half of its interest-bearing indebtedness then outstanding, which the gross amount of its income for the year from business transacted and capital invested within the United States bears to the gross amount of its

income derived from all sources within and without the United States: *Provided*, That in the case of bonds or other indebtedness which have been issued with a guaranty that the interest payable thereon shall be free from taxation, no deduction for the payment of the tax herein imposed or any other tax paid pursuant to such guaranty shall be allowed; and in case of a bank, banking association, loan or trust company, or branch thereof, interest paid within the year on deposits by or on moneys received for investment from either citizens or residents of the United States and secured by interest-bearing certificates of indebtedness issued by such bank, banking association, loan or trust company, or branch thereof;

Fourth. Taxes paid within the year imposed by the authority of the United States, or its Territories, or possessions, or under the authority of any State, county, school district, or municipality, or other taxing subdivision of any State, paid within the United States, not including those assessed against local benefits;

(c) In the case of assessment insurance companies, whether domestic or foreign, the actual deposit of sums with State or Territorial officers, pursuant to law, as additions to guarantee or reserve funds shall be treated as being payments required by law to reserve funds.

RETURNS.

SEC. 13. (a) The tax shall be computed upon the net income, as thus ascertained, received within each preceding calendar year ending December thirty-first: *Provided*, That any corporation, joint-stock company or association, or insurance company, subject to this tax, may designate the last day of any month in the year as the day of the closing of its fiscal year and shall be entitled to have the tax payable by it computed upon the basis of the net income ascertained as herein provided for the year ending on the day so designated in the year preceding the date of assessment instead of upon the basis of the net income for the calendar year preceding the date of assessment; and it shall give notice of the day it has thus designated as the closing of its fiscal year to the collector of the district in which its principal business

office is located at any time not less than thirty days prior to the first day of March of the year in which its return would be filed if made upon the basis of the calendar year;

(b) Every corporation, joint-stock company or association, or insurance company, subject to the tax herein imposed, shall, on or before the first day of March, nineteen hundred and seventeen, and the first day of March in each year thereafter, or, if it has designated a fiscal year for the computation of its tax, then within sixty days after the close of such fiscal year ending prior to December thirty-first, nineteen hundred and sixteen, and the close of each such fiscal year thereafter, render a true and accurate return of its annual net income in the manner and form to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, and containing such facts, data, and information as are appropriate and in the opinion of the commissioner necessary to determine the correctness of the net income returned and to carry out the provisions of this title. The return shall be sworn to by the president, vice president, or other principal officer, and by the treasurer or assistant treasurer. The return shall be made to the collector of the district in which is located the principal office of the corporation, company, or association, where are kept its books of account and other data from which the return is prepared, or in the case of a foreign corporation, company, or association, to the collector of the district in which is located its principal place of business in the United States, or if it have no principal place of business, office, or agency in the United States, then to the collector of internal revenue at Baltimore, Maryland. All such returns shall as received be transmitted forthwith by the collector to the Commissioner of Internal Revenue;

(c) In cases wherein receivers, trustees in bankruptcy, or assignees are operating the property or business of corporations, joint-stock companies or associations, or insurance companies, subject to tax imposed by this title, such receivers, trustees, or assignees shall make returns of net income as and for such corporations, joint-stock companies or associations, and insurance companies, in the same manner and form as such organizations are hereinbefore required to make returns, and any income tax

due on the basis of such returns made by receivers, trustees, or assignees shall be assessed and collected in the same manner as if assessed directly against the organizations of whose businesses or properties they have custody and control;

(d) A corporation, joint-stock company or association, or insurance company, keeping accounts upon any basis other than that of actual receipts and disbursements, unless such other basis does not clearly reflect its income, may, subject to regulations made by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, make its return upon the basis upon which its accounts are kept, in which case the tax shall be computed upon its income as so returned;

(e) All the provisions of this title relating to the tax authorized and required to be deducted and withheld and paid to the officer of the United States Government authorized to receive the same from the income of nonresident alien individuals from sources within the United States shall be made applicable to incomes derived from interest upon bonds and mortgages or deeds of trust or similar obligations of domestic or other resident corporations, joint-stock companies or associations, and insurance companies by nonresident alien firms, copartnerships, companies, corporations, joint-stock companies or associations, and insurance companies not engaged in business or trade within the United States and not having any office or place of business therein;

(f) Likewise, all the provisions of this title relating to the tax authorized and required to be deducted and withheld and paid to the officer of the United States Government authorized to receive the same from the income of nonresident alien individuals from sources within the United States shall be made applicable to income derived from dividends upon the capital stock or from the net earnings of domestic or other resident corporations, joint-stock companies or associations, and insurance companies by nonresident alien companies, corporations, joint-stock companies or associations, and insurance companies not engaged in business or trade within the United States and not having any office or place of business therein.

ASSESSMENT AND ADMINISTRATION.

SEC. 14. (a) All assessments shall be made and the several corporations, joint-stock companies or associations, and insurance companies shall be notified of the amount for which they are respectively liable on or before the first day of June of each successive year, and said assessment shall be paid on or before the fifteenth day of June: *Provided*, That every corporation, joint-stock company or association, and insurance company, computing taxes upon the income of the fiscal year which it may designate in the manner hereinbefore provided, shall pay the taxes due under its assessment within one hundred and five days after the date upon which it is required to file its list or return of income for assessment; except in cases of refusal or neglect to make such return, and in cases of erroneous, false, or fraudulent returns, in which cases the Commissioner of Internal Revenue shall, upon the discovery thereof, at any time within three years after said return is due, make a return upon information obtained as provided for in this title or by existing law; and the assessment made by the Commissioner of Internal Revenue thereon shall be paid by such corporation, joint-stock company or association, or insurance company immediately upon notification of the amount of such assessment; and to any sum or sums due and unpaid after the fifteenth day of June in any year, or after one hundred and five days from the date on which the return of income is required to be made by the taxpayer, and after ten days' notice and demand thereof by the collector, there shall be added the sum of five per centum on the amount of tax unpaid and interest at the rate of one per centum per month upon said tax from the time the same becomes due: *Provided*, That upon the examination of any return of income made pursuant to this title, the Act of August fifth, nineteen hundred and nine, entitled, "An Act to provide revenue, equalize duties and encourage the industries of the United States, and for other purposes," and the Act of October third, nineteen hundred and thirteen, entitled, "An Act to reduce tariff duties and to provide revenue for the Government, and for other purposes," if it shall appear that amounts of tax have been paid in excess of those

properly due, the taxpayer shall be permitted to present a claim for refund thereof notwithstanding the provisions of section thirty-two hundred and twenty-eight of the Revised Statutes;

(b) When the assessment shall be made, as provided in this title, the returns, together with any corrections thereof which may have been made by the commissioner, shall be filed in the office of the Commissioner of Internal Revenue and shall constitute public records and be open to inspection as such: *Provided*, That any and all such returns shall be open to inspection only upon the order of the President, under rules and regulations to be prescribed by the Secretary of the Treasury and approved by the President: *Provided further*, That the proper officers of any State imposing a general income tax may, upon the request of the governor thereof, have access to said returns or to an abstract thereof, showing the name and income of each such corporation, joint-stock company or association, or insurance company, at such times and in such manner as the Secretary of the Treasury may prescribe;

(c) If any of the corporations, joint-stock companies or associations, or insurance companies aforesaid shall refuse or neglect to make a return at the time or times hereinbefore specified in each year, or shall render a false or fraudulent return, such corporation, joint-stock company or association, or insurance company shall be liable to a penalty of not exceeding \$10,000: *Provided*, That the Commissioner of Internal Revenue shall have authority, in the case of either corporations or individuals, to grant a reasonable extension of time in meritorious cases, as he may deem proper.

(d) That section thirty-two hundred and twenty-five of the Revised Statutes of the United States be, and the same is hereby, amended so as to read as follows:

"SEC. 3225. When a second assessment is made in case of any list, statement, or return, which in the opinion of the collector or deputy collector was false or fraudulent, or contained any understatement or undervaluation, no tax collected under such assessment shall be recovered by any suit unless it is proved that the said list, statement, or return was not false nor fraudulent and did not contain any understatement or undervaluation; but

this section shall not apply to statements or returns made or to be made in good faith under the laws of the United States regarding annual depreciation of oil or gas wells and mines."

PART III.—GENERAL ADMINISTRATIVE PROVISIONS.

SEC. 15. That the word "State" or "United States" when used in this title shall be construed to include any Territory, the District of Columbia, Porto Rico, and the Philippine Islands, when such construction is necessary to carry out its provisions.

SEC. 16. That sections thirty-one hundred and sixty-seven, thirty-one hundred and seventy-two, thirty-one hundred and seventy-three, and thirty-one hundred and seventy-six of the Revised Statutes of the United States as amended are hereby amended so as to read as follows:

"SEC. 3167. It shall be unlawful for any collector, deputy collector, agent, clerk, or other officer or employee of the United States to divulge or to make known in any manner whatever not provided by law to any person the operations, style of work, or apparatus of any manufacturer or producer visited by him in the discharge of his official duties, or the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any income return, or to permit any income return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law; and it shall be unlawful for any person to print or publish in any manner whatever not provided by law any income return or any part thereof or source of income, profits, losses, or expenditures appearing in any income return; and any offense against the foregoing provision shall be a misdemeanor and be punished by a fine not exceeding \$1,000 or by imprisonment not exceeding one year, or both, at the discretion of the court; and if the offender be an officer or employee of the United States he shall be dismissed from office or discharged from employment.

"SEC. 3172. Every collector shall, from time to time, cause his deputies to proceed through every part of his district and inquire after and concerning all persons therein who are liable to pay

any internal-revenue tax, and all persons owning or having the care and management of any objects liable to pay any tax, and to make a list of such persons and enumerate said objects.

"SEC. 3173. It shall be the duty of any person, partnership, firm, association, or corporation, made liable to any duty, special tax, or other tax imposed by law, when not otherwise provided for, (1) in case of a special tax, on or before the thirty-first day of July in each year, (2) in case of income tax on or before the first day of March in each year, or on or before the last day of the sixty-day period next following the closing date of the fiscal year for which it makes a return of its income, and (3) in other cases before the day on which the taxes accrue, to make a list or return, verified by oath, to the collector or a deputy collector of the district where located, of the articles or objects, including the amount of annual income charged with a duty or tax, the quantity of goods, wares, and merchandise, made or sold and charged with a tax, the several rates and aggregate amount, according to the forms and regulations to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, for which such person, partnership, firm, association, or corporation is liable: *Provided*, That if any person liable to pay any duty or tax, or owning, possessing, or having the care or management of property, goods, wares, and merchandise, article or objects liable to pay any duty, tax, or license, shall fail to make and exhibit a list or return required by law, but shall consent to disclose the particulars of any and all the property, goods, wares, and merchandise, articles, and objects liable to pay any duty or tax, or any business or occupation liable to pay any tax as aforesaid, then, and in that case, it shall be the duty of the collector or deputy collector to make such list or return, which, being distinctly read, consented to, and signed and verified by oath by the person so owning, possessing, or having the care and management as aforesaid, may be received as the list of such person: *Provided further*, That in case no annual list or return has been rendered by such person to the collector or deputy collector as required by law, and the person shall be absent from his or her residence or place of business at the time the collector or a deputy collector shall call for the

annual list or return, it shall be the duty of such collector or deputy collector to leave at such place of residence or business, with some one of suitable age and discretion, if such be present, otherwise to deposit in the nearest post office, a note or memorandum addressed to such person, requiring him or her to render to such collector or deputy collector the list or return required by law within ten days from the date of such note or memorandum, verified by oath. And if any person, on being notified or required as aforesaid, shall refuse or neglect to render such list or return within the time required as aforesaid, or whenever any person who is required to deliver a monthly or other return of objects subject to tax fails to do so at the time required, or delivers any return which, in the opinion of the collector, is erroneous, false, or fraudulent, or contains any undervaluation or understatement, or refuses to allow any regularly authorized Government officer to examine the books of such person, firm, or corporation, it shall be lawful for the collector to summon such person, or any other person having possession, custody, or care of books of account containing entries relating to the business of such person, or any other person he may deem proper, to appear before him and produce such books at a time and place named in the summons, and to give testimony or answer interrogatories, under oath, respecting any objects or income liable to tax or the returns thereof. The collector may summon any person residing or found within the State or Territory in which his district lies; and when the person intended to be summoned does not reside and can not be found within such State or Territory, he may enter any collection district where such person may be found and there make the examination herein authorized. And to this end he may there exercise all the authority which he might lawfully exercise in the district for which he was commissioned: *Provided*, That 'person,' as used in this section, shall be construed to include any corporation, joint-stock company or association, or insurance company when such construction is necessary to carry out its provisions.

"SEC. 3176. If any person, corporation, company, or association fails to make and file a return or list at the time prescribed by law, or makes, willfully or otherwise, a false or fraudulent

return or list, the collector or deputy collector shall make the return or list from his own knowledge and from such information as he can obtain through testimony or otherwise. Any return or list so made and subscribed by a collector or deputy collector shall be *prima facie* good and sufficient for all legal purposes.

"If the failure to file a return or list is due to sickness or absence the collector may allow such further time, not exceeding thirty days, for making and filing the return or list as he deems proper.

"The Commissioner of Internal Revenue shall assess all taxes, other than stamp taxes, as to which returns or lists are so made by a collector or deputy collector. In case of any failure to make and file a return or list within the time prescribed by law or by the collector, the Commissioner of Internal Revenue shall add to the tax fifty per centum of its amount except that, when a return is voluntarily and without notice from the collector filed after such time and it is shown that the failure to file it was due to a reasonable cause and not to willful neglect, no such addition shall be made to the tax. In case a false or fraudulent return or list is willfully made, the Commissioner of Internal Revenue shall add to the tax one hundred per centum of its amount.

"The amount so added to any tax shall be collected at the same time and in the same manner and as part of the tax unless the tax has been paid before the discovery of the neglect, falsity, or fraud, in which case the amount so added shall be collected in the same manner as the tax."

SEC. 17. That it shall be the duty of every collector of internal revenue, to whom any payment of any taxes is made under the provisions of this title, to give to the person making such payment a full written or printed receipt, expressing the amount paid and the particular account for which such payment was made; and whenever such payment is made such collector shall, if required, give a separate receipt for each tax paid by any debtor, on account of payments made to or to be made by him to separate creditors in such form that such debtor can conveniently produce the same separately to his several creditors in satisfaction of their respective demands to the amounts specified in such receipts; and such

receipts shall be sufficient evidence in favor of such debtor to justify him in withholding the amount therein expressed from his next payment to his creditor; but such creditor may, upon giving to his debtor a full written receipt, acknowledging the payment to him of whatever sum may be actually paid, and accepting the amount of tax paid as aforesaid (specifying the same) as a further satisfaction of the debt to that amount, require the surrender to him of such collector's receipt.

SEC. 18. That if any individual liable to make the return or pay the tax aforesaid shall refuse or neglect to make such return at the time or times hereinbefore specified in each year, he shall be liable to a penalty of not less than \$20 nor more than \$1,000. Any individual or any officer of any corporation, joint-stock company or association, or insurance company required by law to make, render, sign, or verify any return who makes any false or fraudulent return or statement with intent to defeat or evade the assessment required by this title to be made shall be guilty of a misdemeanor, and shall be fined not exceeding \$2,000 or be imprisoned not exceeding one year, or both, in the discretion of the court, with the costs of prosecution: *Provided*, That where any tax heretofore due and payable has been duly paid by the taxpayer, it shall not be re-collected from any person or corporation required to retain it at its source, nor shall any penalty be imposed or collected in such cases from the taxpayer, or such person or corporation whose duty it was to retain it, for failure to return or pay the same, unless such failure was fraudulent and for the purpose of evading payment.

SEC. 19. The collector or deputy collector shall require every return to be verified by the oath of the party rendering it. If the collector or deputy collector have reason to believe that the amount of any income returned is understated, he shall give due notice to the person making the return to show cause why the amount of the return should not be increased, and upon proof of the amount understated may increase the same accordingly. Such person may furnish sworn testimony to prove any relevant facts, and, if dissatisfied with the decision of the collector, may appeal to the Commissioner of Internal Revenue for his decision under such rules of procedure as may be prescribed by regulation.

SEC. 20. That jurisdiction is hereby conferred upon the district courts of the United States for the district within which any person summoned under this title to appear to testify or to produce books shall reside, to compel such attendance, production of books, and testimony by appropriate process.

SEC. 21. That the preparation and publication of statistics reasonably available with respect to the operation of the income tax law and containing classifications of taxpayers and of income, the amounts allowed as deductions and exemptions, and any other facts deemed pertinent and valuable, shall be made annually by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury.

SEC. 22. That all administrative, special, and general provisions of law, including the laws in relation to the assessment, remission, collection, and refund of internal-revenue taxes not heretofore specifically repealed and not inconsistent with the provisions of this title, are hereby extended and made applicable to all the provisions of this title and to the tax herein imposed.

SEC. 23. That the provisions of this title shall extend to Porto Rico and the Philippine Islands: *Provided*, That the administration of the law and the collection of the taxes imposed in Porto Rico and the Philippine Islands shall be by the appropriate internal-revenue officers of those governments, and all revenues collected in Porto Rico and the Philippine Islands thereunder shall accrue intact to the general Governments thereof, respectively: *Provided further*, That the jurisdiction in this title conferred upon the district courts of the United States shall, so far as the Philippine Islands are concerned, be vested in the courts of the first instance of said islands: *And provided further*, That nothing in this title shall be held to exclude from the computation of the net income the compensation paid any official by the governments of the District of Columbia, Porto Rico, and the Philippine Islands, or the political subdivisions thereof.

SEC. 24. That Section II of the Act approved October third, nineteen hundred and thirteen, entitled "An Act to reduce tariff duties and to provide revenue for the Government, and for other purposes," is hereby repealed, except as herein otherwise pro-

vided, and except that it shall remain in force for the assessment and collection of all taxes which have accrued thereunder, and for the imposition and collection of all penalties or forfeitures which have accrued or may accrue in relation to any of such taxes, and except that the unexpended balance of any appropriation heretofore made and now available for the administration of such section or any provision thereof shall be available for the administration of this title or the corresponding provision thereof.

SEC. 25. That income on which has been assessed the tax imposed by Section II of the Act entitled "An Act to reduce tariff duties and to provide revenue for the Government, and for other purposes," approved October third, nineteen hundred and thirteen, shall not be considered as income within the meaning of this title: *Provided*, That this section shall not conflict with that portion of section ten, of this title, under which a taxpayer has fixed its own fiscal year.

ACT OF 1917

(Approved Oct. 3, 1917)

TITLE I.—WAR INCOME TAX.

SECTION 1. That in addition to the normal tax imposed by subdivision (a) of section one of the Act entitled "An Act to increase the revenue, and for other purposes," approved September eighth, nineteen hundred and sixteen, there shall be levied, assessed, collected, and paid a like normal tax of two per centum upon the income of every individual, a citizen or resident of the United States, received in the calendar year nineteen hundred and seventeen and every calendar year thereafter.

SEC. 2. That in addition to the additional tax imposed by subdivision (b) of section one of such Act of September eighth, nineteen hundred and sixteen, there shall be levied, assessed, collected, and paid a like additional tax upon the income of every individual received in the calendar year nineteen hundred and seventeen and every calendar year thereafter, as follows:

One per centum per annum upon the amount by which the total net income exceeds \$5,000 and does not exceed \$7,500;

Two per centum per annum upon the amount by which the total net income exceeds \$7,500 and does not exceed \$10,000;

Three per centum per annum upon the amount by which the total net income exceeds \$10,000 and does not exceed \$12,500;

Four per centum per annum upon the amount by which the total net income exceeds \$12,500 and does not exceed \$15,000;

Five per centum per annum upon the amount by which the total net income exceeds \$15,000 and does not exceed \$20,000;

Seven per centum per annum upon the amount by which the total net income exceeds \$20,000 and does not exceed \$40,000;

Ten per centum per annum upon the amount by which the total net income exceeds \$40,000 and does not exceed \$60,000;

Fourteen per centum per annum upon the amount by which the total net income exceeds \$60,000 and does not exceed \$80,000;

Eighteen per centum per annum upon the amount by which the total net income exceeds \$80,000 and does not exceed \$100,000;

Twenty-two per centum per annum upon the amount by which the total net income exceeds \$100,000 and does not exceed \$150,000;

Twenty-five per centum per annum upon the amount by which the total net income exceeds \$150,000 and does not exceed \$200,000;

Thirty per centum per annum upon the amount by which the total net income exceeds \$200,000 and does not exceed \$250,000;

Thirty-four per centum per annum upon the amount by which the total net income exceeds \$250,000 and does not exceed \$300,000;

Thirty-seven per centum per annum upon the amount by which the total net income exceeds \$300,000 and does not exceed \$500,000;

Forty per centum per annum upon the amount by which the total net income exceeds \$500,000 and does not exceed \$750,000.

Forty-five per centum per annum upon the amount by which the total net income exceeds \$750,000 and does not exceed \$1,000,000.

Fifty per centum per annum upon the amount by which the total net income exceeds \$1,000,000.

SEC. 3. That the taxes imposed by sections one and two of this Act shall be computed, levied, assessed, collected, and paid upon the same basis and in the same manner as the similar taxes imposed by section one of such Act of September eighth, nineteen hundred and sixteen, except that in the case of the tax imposed by section one of this Act (a) the exemptions of \$3,000 and \$4,000 provided in section seven of such Act of September eighth, nineteen hundred and sixteen, as amended by this Act, shall be, respectively, \$1,000 and \$2,000, and (b) the returns required under subdivisions (b) and (c) of section eight of such Act as amended by this Act shall be required in the case of net incomes of \$1,000 or over, in the case of unmarried persons, and \$2,000 or over in the case of married persons, instead of \$3,000 or over, as therein provided, and (c) the provisions of

subdivision (c) of section nine of such Act, as amended by this Act, requiring the normal tax of individuals on income derived from interest to be deducted and withheld at the source of the income shall not apply to the new two per centum normal tax prescribed in section one of this Act until on and after January first, nineteen hundred and eighteen, and thereafter only one two per centum normal tax shall be deducted and withheld at the source under the provisions of such subdivision (c), and any further normal tax for which the recipient of such income is liable under this Act or such Act of September eighth, nineteen hundred and sixteen, as amended by this Act, shall be paid by such recipient.

SEC. 4. That in addition to the tax imposed by subdivision (a) of section ten of such Act of September eighth, nineteen hundred and sixteen, as amended by this Act, there shall be levied, assessed, collected, and paid a like tax of four per centum upon the income received in the calendar year nineteen hundred and seventeen and every calendar year thereafter, by every corporation, joint-stock company or association, or insurance company, subject to the tax imposed by that subdivision of that section, except that if it has fixed its own fiscal year, the tax imposed by this section for the fiscal year ending during the calendar year nineteen hundred and seventeen shall be levied, assessed, collected, and paid only on that proportion of its income for such fiscal year which the period between January first, nineteen hundred and seventeen, and the end of such fiscal year bears to the whole of such fiscal year.

The tax imposed by this section shall be computed, levied, assessed, collected, and paid upon the same incomes and in the same manner as the tax imposed by subdivision (a) of section ten of such Act of September eighth, nineteen hundred and sixteen, as amended by this Act, except that for the purpose of the tax imposed by this section the income embraced in a return of a corporation, joint-stock company or association, or insurance company, shall be credited with the amount received as dividends upon the stock or from the net earnings of any other corporation, joint-stock company or association, or insurance company, which is taxable upon its net income as provided in this title.

SEC. 5. That the provisions of this title shall not extend to Porto Rico or the Philippine Islands, and the Porto Rican or Philippine Legislature shall have power by due enactment to amend, alter, modify, or repeal the income tax laws in force in Porto Rico or the Philippine Islands, respectively.

TITLE II.—WAR EXCESS PROFITS TAX.

SEC. 200. That when used in this title—

The term "corporation" includes joint-stock companies or associations and insurance companies;

The term "domestic" means created under the law of the United States, or of any State, Territory, or District thereof, and the term "foreign" means created under the law of any other possession of the United States or of any foreign country or government;

The term "United States" means only the States, the Territories of Alaska and Hawaii, and the District of Columbia;

The term "taxable year" means the twelve months ending December thirty-first, excepting in the case of a corporation or partnership which has fixed its own fiscal year, in which case it means such fiscal year. The first taxable year shall be the year ending December thirty-first, nineteen hundred and seventeen, except that in the case of a corporation or partnership which has fixed its own fiscal year, it shall be the fiscal year ending during the calendar year nineteen hundred and seventeen. If a corporation or partnership, prior to March first, nineteen hundred and eighteen, makes a return covering its own fiscal year, and includes therein the income received during that part of the fiscal year falling within the calendar year nineteen hundred and sixteen, the tax for such taxable year shall be that proportion of the tax computed upon the net income during such full fiscal year which the time from January first, nineteen hundred and seventeen, to the end of such fiscal year bears to the full fiscal year; and

The term "prewar period" means the calendar years nineteen hundred and eleven, nineteen hundred and twelve, and nineteen hundred and thirteen, or, if a corporation or partnership was not

in existence or an individual was not engaged in a trade or business during the whole of such period, then as many of such years during the whole of which the corporation or partnership was in existence or the individual was engaged in the trade or business.

The terms "trade" and "business" include professions and occupations.

The term "net income" means in the case of a foreign corporation or partnership or a nonresident alien individual, the net income received from sources within the United States.

SEC. 201. That in addition to the taxes under existing law and under this act there shall be levied, assessed, collected, and paid for each taxable year upon the income of every corporation, partnership, or individual, a tax (hereinafter in this title referred to as the tax) equal to the following percentages of the net income:

Twenty per centum of the amount of the net income in excess of the deduction (determined as hereinafter provided) and not in excess of fifteen per centum of the invested capital for the taxable year;

Twenty-five per centum of the amount of the net income in excess of fifteen per centum and not in excess of twenty per centum of such capital;

Thirty-five per centum of the amount of the net income in excess of twenty per centum and not in excess of twenty-five per centum of such capital;

Forty-five per centum of the amount of the net income in excess of twenty-five per centum and not in excess of thirty-three per centum of such capital; and

Sixty per centum of the amount of the net income in excess of thirty-three per centum of such capital.

For the purpose of this title every corporation or partnership not exempt under the provisions of this section shall be deemed to be engaged in business, and all the trades and businesses in which it is engaged shall be treated as a single trade or business, and all its income from whatever source derived shall be deemed to be received from such trade or business.

This title shall apply to all trades or businesses of whatever description, whether continuously carried on or not, except—

(a) In the case of officers and employees under the United States, or any State, Territory, or the District of Columbia, or any local subdivision thereof, the compensation or fees received by them as such officers or employees;

(b) Corporations exempt from tax under the provisions of section eleven of Title I of such Act of September eighth, nineteen hundred and sixteen, as amended by this Act, and partnerships and individuals carrying on or doing the same business, or coming within the same description; and

(c) Incomes derived from the business of life, health, and accident insurance combined in one policy issued on the weekly premium payment plan.

SEC. 202. That the tax shall not be imposed in the case of the trade or business of a foreign corporation or partnership or a nonresident alien individual, the net income of which trade or business during the taxable year is less than \$3,000.

SEC. 203. That for the purposes of this title the deduction shall be as follows, except as otherwise in this title provided—

(a) In the case of a domestic corporation, the sum of (1) an amount equal to the same percentage of the invested capital for the taxable year which the average amount of the annual net income of the trade or business during the prewar period was of the invested capital for the prewar period (but not less than seven or more than nine per centum of the invested capital for the taxable year), and (2) \$3,000;

(b) In the case of a domestic partnership or of a citizen or resident of the United States, the sum of (1) an amount equal to the same percentage of the invested capital for the taxable year which the average amount of the annual net income of the trade or business during the prewar period was of the invested capital for the prewar period (but not less than seven or more than nine per centum of the invested capital for the taxable year), and (2) \$6,000;

(c) In the case of a foreign corporation or partnership or of a nonresident alien individual, an amount ascertained in the same manner as provided in subdivisions (a) and (b) without any exemption of \$3,000 or \$6,000.

(d) If the Secretary of the Treasury is unable satisfactorily to

determine the average amount of the annual net income of the trade or business during the prewar period, the deduction shall be determined in the same manner as provided in section two hundred and five.

SEC. 204. That if a corporation or partnership was not in existence, or an individual was not engaged in the trade or business, during the whole of any one calendar year during the prewar period, the deduction shall be an amount equal to eight per centum of the invested capital for the taxable year, plus in the case of a domestic corporation \$3,000, and in the case of a domestic partnership or a citizen or resident of the United States \$6,000.

A trade or business carried on by a corporation, partnership, or individual, although formally organized or reorganized on or after January second, nineteen hundred and thirteen, which is substantially a continuation of a trade or business carried on prior to that date, shall, for the purposes of this title, be deemed to have been in existence prior to that date, and the net income and invested capital of its predecessor prior to that date shall be deemed to have been its net income and invested capital.

SEC. 205. (a) That if the Secretary of the Treasury, upon complaint find either (1) that during the prewar period a domestic corporation or partnership, or a citizen or resident of the United States, had no net income from the trade or business, or (2) that during the prewar period the percentage, which the net income was of the invested capital, was low as compared with the percentage, which the net income during such period of representative corporations, partnerships, and individuals, engaged in a like or similar trade or business, was of their invested capital, then the deduction shall be the sum of (1) an amount equal to the same percentage of its invested capital for the taxable year which the average deduction (determined in the same manner as provided in section two hundred and three, without including the \$3,000 or \$6,000 therein referred to) for such year of representative corporations, partnerships, or individuals, engaged in a like or similar trade or business, is of their average invested capital for such year plus (2) in the case of a domestic corpora-

tion \$3,000, and in the case of a domestic partnership or a citizen or resident of the United States \$6,000.

The percentage which the net income was of the invested capital in each trade or business shall be determined by the Commissioner of Internal Revenue, in accordance with regulations prescribed by him, with the approval of the Secretary of the Treasury. In the case of a corporation or partnership which has fixed its own fiscal year, the percentage determined by the calendar year ending during such fiscal year shall be used.

(b) The tax shall be assessed upon the basis of the deduction determined as provided in section two hundred and three, but the taxpayer claiming the benefit of this section may at the time of making the return file a claim for abatement of the amount by which the tax so assessed exceeds a tax computed upon the basis of the deduction determined as provided in this section. In such event, collection of the part of the tax covered by such claim for abatement shall not be made until the claim is decided, but if in the judgment of the Commissioner of Internal Revenue, the interests of the United States would be jeopardized thereby he may require the claimant to give a bond in such amount and with such sureties as the commissioner may think wise to safeguard such interests, conditioned for the payment of any tax found to be due, with the interest thereon, and if such bond, satisfactory to the commissioner, is not given within such time as he prescribes, the full amount of tax assessed shall be collected and the amount overpaid, if any, shall upon final decision of the application be refunded as a tax erroneously or illegally collected.

SEC. 206. That for the purposes of this title the net income of a corporation shall be ascertained and returned (a) for the calendar years nineteen hundred and eleven and nineteen hundred and twelve upon the same basis and in the same manner as provided in section thirty-eight of the Act entitled "An Act to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes," approved August fifth, nineteen hundred and nine, except that income taxes paid by it within the year imposed by the authority of the United States shall be included; (b) for the calendar year nineteen hundred and thirteen upon the same basis and in the same

manner as provided in section II of the Act entitled "An Act to reduce tariff duties and to provide revenue for the Government, and for other purposes," approved October third, nineteen hundred and thirteen, except that income taxes paid by it within the year imposed by the authority of the United States shall be included, and except that the amounts received by it as dividends upon the stock or from the net earnings of other corporations, joint-stock companies or associations, or insurance companies, subject to the tax imposed by section II of such Act of October third, nineteen hundred and thirteen, shall be deducted; and (c) for the taxable year upon the same basis and in the same manner as provided in Title I of the Act entitled "An Act to increase the revenue, and for other purposes," approved September eighth, nineteen hundred and sixteen, as amended by this Act, except that the amounts received by it as dividends upon the stock or from the net earnings of other corporations, joint-stock companies or associations, or insurance companies, subject to the tax imposed by Title I of such Act of September eighth, nineteen hundred and sixteen, shall be deducted.

The net income of a partnership or individual shall be ascertained and returned for the calendar years nineteen hundred and eleven, nineteen hundred and twelve, and nineteen hundred and thirteen, and for the taxable year, upon the same basis and in the same manner as provided in Title I of such Act of September eighth, nineteen hundred and sixteen, as amended by this Act, except that the credit allowed by subdivision (b) of section five of such Act shall be deducted. There shall be allowed (a) in the case of a domestic partnership the same deductions as allowed to individuals in subdivision (a) of section five of such Act of September eighth, nineteen hundred and sixteen, as amended by this Act; and (b) in the case of a foreign partnership the same deductions as allowed to individuals in subdivision (a) of section six of such Act as amended by this Act.

SEC. 207. That as used in this title, the term "invested capital" for any year means the average invested capital for the year, as defined and limited in this title, averaged monthly.

As used in this title "invested capital" does not include stocks, bonds (other than obligations of the United States), or

other assets, the income from which is not subject to the tax imposed by this title nor money or other property borrowed, and means, subject to the above limitations:

(a) In the case of a corporation or partnership: (1) Actual cash paid in, (2) the actual cash value of tangible property paid in other than cash, for stock or shares in such corporation or partnership, at the time of such payment (but in case such tangible property was paid in prior to January first, nineteen hundred and fourteen, the actual cash value of such property as of January first, nineteen hundred and fourteen, but in no case to exceed the par value of the original stock or shares specifically issued therefor), and (3) paid in or earned surplus and undivided profits used or employed in the business, exclusive of undivided profits earned during the taxable year: *Provided*, That (a) the actual cash value of patents and copyrights paid in for stock or shares in such corporation or partnership, at the time of such payment, shall be included as invested capital, but not to exceed the par value of such stock or shares at the time of such payment, and (b) the good will, trade-marks, trade brands, the franchise of a corporation or partnership, or other intangible property, shall be included as invested capital if the corporation or partnership made payment bona fide therefor specifically as such in cash or tangible property, the value of such good will, trade-mark, trade brand, franchise, or intangible property, not to exceed the actual cash or actual cash value of the tangible property paid therefor at the time of such payment; but good will, trade-marks, trade brands, franchise of a corporation or partnership, or other intangible property, bona fide purchased, prior to March third, nineteen hundred and seventeen, for and with interests or shares in a partnership or for and with shares in the capital stock of a corporation (issued prior to March third, nineteen hundred and seventeen), in an amount not to exceed, on March third, nineteen hundred and seventeen, twenty per centum of the total interests or shares in the partnership or of the total shares of the capital stock of the corporation, shall be included in invested capital at a value not to exceed the actual cash value at the time of such purchase, and in case of issue of stock therefor not to exceed the par value of such stock;

(b) In the case of an individual, (1) actual cash paid into the trade or business, and (2) the actual cash value of tangible property paid into the trade or business, other than cash, at the time of such payment (but in case such tangible property was paid in prior to January first, nineteen hundred and fourteen, the actual cash value of such property as of January first, nineteen hundred and fourteen), and (3) the actual cash value of patents, copyrights, good will, trade-marks, trade brands, franchises, or other intangible property, paid into the trade or business, at the time of such payment, if payment was made therefor specifically as such in cash or tangible property, not to exceed the actual cash or actual cash value of the tangible property bona fide paid therefor at the time of such payment.

In the case of a foreign corporation or partnership or of a non-resident alien individual the term "invested capital" means that proportion of the entire invested capital, as defined and limited in this title, which the net income from sources within the United States bears to the entire net income.

SEC. 208. That in case of the reorganization, consolidation or change of ownership of a trade or business after March third, nineteen hundred and seventeen, if an interest or control in such trade or business of fifty per centum or more remains in control of the same persons, corporations, associations, partnerships, or any of them, then in ascertaining the invested capital of the trade or business no asset transferred or received from the prior trade or business shall be allowed a greater value than would have been allowed under this title in computing the invested capital of such prior trade or business if such asset had not been so transferred or received, unless such asset was paid for specifically as such, in cash or tangible property, and then not to exceed the actual cash or actual cash value of the tangible property paid therefor at the time of such payment.

SEC. 209. That in the case of a trade or business having no invested capital or not more than a nominal capital there shall be levied, assessed, collected and paid, in addition to the taxes under existing law and under this Act, in lieu of the tax imposed by section two hundred and one, a tax equivalent to eight per centum of the net income of such trade or business in excess of

the following deductions: In the case of a domestic corporation \$3,000, and in the case of a domestic partnership or a citizen or resident of the United States \$6,000; in the case of all other trades or business, no deduction.

SEC. 210. That if the Secretary of the Treasury is unable in any case satisfactorily to determine the invested capital, the amount of the deduction shall be the sum of (1) an amount equal to the same proportion of the net income of the trade or business received during the taxable year as the proportion which the average deduction (determined in the same manner as provided in section two hundred and three, without including the \$3,000 or \$6,000 therein referred to) for the same calendar year of representative corporations, partnerships, and individuals, engaged in a like or similar trade or business, bears to the total net income of the trade or business received by such corporations, partnerships, and individuals, plus (2) in the case of a domestic corporation \$3,000, and in the case of a domestic partnership or a citizen or resident of the United States \$6,000.

For the purpose of this section the proportion between the deduction and the net income in each trade or business shall be determined by the Commissioner of Internal Revenue in accordance with regulations prescribed by him, with the approval of the Secretary of the Treasury. In the case of a corporation or partnership, which has fixed its own fiscal year, the proportion determined for the calendar year ending during such fiscal year shall be used.

SEC. 211. That every foreign partnership having a net income of \$3,000 or more for the taxable year, and every domestic partnership having a net income of \$6,000 or more for the taxable year, shall render a correct return of the income of the trade or business for the taxable year, setting forth specifically the gross income for such year, and the deductions allowed in this title. Such returns shall be rendered at the same time and in the same manner as is prescribed for income-tax returns under Title I of such Act of September eighth, nineteen hundred and sixteen, as amended by this Act.

SEC. 212. That all administrative, special, and general provisions of law, including the laws in relation to the assessment,

remission, collection, and refund of internal-revenue taxes not heretofore specifically repealed, and not inconsistent with the provisions of this title are hereby extended and made applicable to all the provisions of this title and to the tax herein imposed, and all provisions of Title I of such Act of September eighth, nineteen hundred and sixteen, as amended by this Act, relating to returns and payment of the tax therein imposed, including penalties, are hereby made applicable to the tax imposed by this title.

SEC. 213. That the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall make all necessary regulations for carrying out the provisions of this title, and may require any corporation, partnership, or individual, subject to the provisions of this title, to furnish him with such facts, data, and information as in his judgment are necessary to collect the tax imposed by this title.

SEC. 214. That Title II (sections two hundred to two hundred and seven, inclusive) of the Act entitled "An Act to provide increased revenue to defray the expenses of the increased appropriations for the Army and Navy, and the extensions of fortifications, and for other purposes," approved March third, nineteen hundred and seventeen, is hereby repealed.

Any amount heretofore or hereafter paid on account of the tax imposed by such Title II, shall be credited toward the payment of the tax imposed by this title, and if the amount so paid exceeds the amount of such tax the excess shall be refunded as a tax erroneously or illegally collected.

Subdivision (1) of section three hundred and one of such Act of September eighth, nineteen hundred and sixteen, is hereby amended so that the rate of tax for the taxable year nineteen hundred and seventeen shall be ten per centum instead of twelve and one-half per centum, as therein provided.

Subdivision (2) of such section is hereby amended to read as follows:

"(2) This section shall cease to be of effect on and after January first, nineteen hundred and eighteen."

ACT OF 1918 (INCOME AND PROFITS TAX PROVISIONS)

(Approved Feb. 24, 1919)

AN ACT

To provide revenue, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I.—GENERAL DEFINITIONS

SECTION 1. That when used in this Act—

The term "person" includes partnerships and corporations as well as individuals;

The term "corporation" includes associations, joint-stock companies, and insurance companies;

The term "domestic" when applied to a corporation or partnership means created or organized in the United States;

The term "foreign" when applied to a corporation or partnership means created or organized outside the United States;

The term "United States" when used in a geographical sense includes only the States, the Territories of Alaska and Hawaii, and the District of Columbia;

The term "Secretary" means the Secretary of the Treasury;

The term "Commissioner" means the Commissioner of Internal Revenue;

The term "collector" means collector of internal revenue;

The term "Revenue Act of 1916" means the Act entitled "An Act to increase the revenue, and for other purposes," approved September 8, 1916;

The term "Revenue Act of 1917" means the Act entitled "An Act to provide revenue to defray war expenses, and for other purposes," approved October 3, 1917;

The term "taxpayer" includes any person, trust or estate subject to a tax imposed by this Act;

The term "Government contract" means (a) a contract made with the United States, or with any department, bureau, officer, commission, board, or agency, under the United States and acting in its behalf, or with any agency controlled by any of the above if the contract is for the benefit of the United States, or (b) a subcontract made with a contractor performing such a contract if the products or services to be furnished under the subcontract are for the benefit of the United States.

The term "Government contract or contracts made between April 6, 1917, and November 11, 1918, both dates inclusive" when applied to a contract of the kind referred to in clause (a) of this paragraph, includes all such contracts which, although entered into during such period, were originally not enforceable, but which have been or may become enforceable by reason of subsequent validation in pursuance of law;

The term "military or naval forces of the United States" includes the Marine Corps, the Coast Guard, the Army Nurse Corps, Female, and the Navy Nurse Corps, Female, but this shall not be deemed to exclude other units otherwise included within such term;

The term "present war" means the war in which the United States is now engaged against the German Government.

For the purposes of this Act the date of the termination of the present war shall be fixed by proclamation of the President.

TITLE II.—INCOME TAX

PART I.—GENERAL PROVISIONS

Definitions

SECTION 200. That when used in this title—

The term "taxable year" means the calendar year, or the fiscal year ending during such calendar year, upon the basis of which the net income is computed under section 212 or section 232.

The term "fiscal year" means an accounting period of twelve months ending on the last day of any month other than Decem-

ber. The first taxable year, to be called the taxable year 1918, shall be the calendar year 1918 or any fiscal year ending during the calendar year 1918;

The term "fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any person acting in any fiduciary capacity for any person, trust or estate;

The term "withholding agent" means any person required to deduct and withhold any tax under the provisions of section 221 or section 237;

The term "personal service corporation" means a corporation whose income is to be ascribed primarily to the activities of the principal owners or stockholders who are themselves regularly engaged in the active conduct of the affairs of the corporation and in which capital (whether invested or borrowed) is not a material income-producing factor; but does not include any foreign corporation, nor any corporation 50 per centum or more of whose gross income consists either (1) of gains, profits, or income derived from trading as a principal, or (2) of gains, profits, commissions, or other income, derived from a Government contract or contracts made between April 6, 1917, and November 11, 1918, both dates inclusive;

The term "paid," for the purposes of the deductions and credits under this title, means "paid or accrued" or "paid or incurred," and the terms "paid or incurred" and "paid or accrued" shall be construed according to the method of accounting upon the basis of which the net income is computed under section 212.

Dividends

SECTION 201. (a) That the term "dividend" when used in this title (except in paragraph (10) of subdivision (a) of section 234) means (1) any distribution made by a corporation, other than a personal service corporation, to its shareholders or members, whether in cash or in other property or in stock of the corporation, out of its earning or profits accumulated since February 28, 1913, or (2) any such distribution made by a personal service corporation out of its earnings or profits accumulated since February 28, 1913, and prior to January 1, 1918.

(b) Any distribution shall be deemed to have been made from earnings or profits unless all earnings and profits have first been distributed. Any distribution made in the year 1918 or any year thereafter shall be deemed to have been made from earnings or profits accumulated since February 28, 1913, or, in the case of a personal service corporation, from the most recently accumulated earnings or profits; but any earnings or profits accumulated prior to March 1, 1913, may be distributed in stock dividends or otherwise, exempt from the tax, after the earnings and profits accumulated since February 28, 1913, have been distributed.

(c) A dividend paid in stock of the corporation shall be considered income to the amount of the earnings or profits distributed. Amounts distributed in the liquidation of a corporation shall be treated as payments in exchange for stock or shares, and any gain or profit realized thereby shall be taxed to the distributee as other gains or profits.

(d) If any stock dividend (1) is received by a taxpayer between January 1 and November 1, 1918, both dates inclusive, or (2) is during such period bona fide authorized or declared, and entered on the books of the corporation, and is received by a taxpayer after November 1, 1918, and before the expiration of thirty days after the passage of this Act, then such dividend shall, in the manner provided in Section 206, be taxed to the recipient at the rates prescribed by law for the years in which the corporation accumulated the earnings or profits from which such dividend was paid, but the dividend shall be deemed to have been paid from the most recently accumulated earnings or profits.

(e) Any distribution made during the first sixty days of any taxable year shall be deemed to have been made from earnings or profits accumulated during preceding taxable years; but any distribution made during the remainder of the taxable year shall be deemed to have been made from earnings or profits accumulated between the close of the preceding taxable year and the date of distribution, to the extent of such earnings or profits, and if the books of the corporation do not show the amount of such earnings or profits, the earnings or profits for

the accounting period within which the distribution was made shall be deemed to have been accumulated ratably during such period.

Basis for Determining Gain or Loss

SECTION 202. (a) That for the purpose of ascertaining the gain derived or loss sustained from the sale or other disposition of property, real, personal, or mixed, the basis shall be—

(1) In the case of property acquired before March 1, 1913, the fair market price or value of such property as of that date; and

(2) In the case of property acquired on or after that date, the cost thereof; or the inventory value, if the inventory is made in accordance with section 203.

(b) When property is exchanged for other property, the property received in exchange shall for the purpose of determining gain or loss be treated as the equivalent of cash to the amount of its fair market value, if any; but when in connection with the reorganization, merger, or consolidation of a corporation a person receives in place of stock or securities owned by him new stock or securities of no greater aggregate par or face value, no gain or loss shall be deemed to occur from the exchange, and the new stock or securities received shall be treated as taking the place of the stock, securities, or property exchanged.

When in the case of any such reorganization, merger or consolidation the aggregate par or face value of the new stock or securities received is in excess of the aggregate par or face value of the stock or securities exchanged, a like amount in par or face value of the new stock or securities received shall be treated as taking the place of the stock or securities exchanged, and the amount of the excess in par or face value shall be treated as a gain to the extent that the fair market value of the new stock or securities is greater than the cost (or if acquired prior to March 1, 1913, the fair market value as of that date) of the stock or securities exchanged.

Inventories

SECTION 203. That whenever in the opinion of the Commissioner the use of inventories is necessary in order clearly to determine the income of any taxpayer, inventories shall be taken by such taxpayer upon such basis as the Commissioner, with the approval of the Secretary, may prescribe as conforming as nearly as may be to the best accounting practice in the trade or business and as most clearly reflecting the income.

Net Losses

SECTION 204. (a) That as used in this section the term "net loss" refers only to net losses resulting from either (1) the operation of any business regularly carried on by the taxpayer, or (2) the bona fide sale by the taxpayer of plant, buildings, machinery, equipment or other facilities, constructed, installed or acquired by the taxpayer on or after April 6, 1917, for the production of articles contributing to the prosecution of the present war; and when so resulting means the excess of the deductions allowed by law (excluding in the case of corporations amounts allowed as a deduction under paragraph (6) of subdivision (a) of section 234) over the sum of the gross income plus any interest received free from taxation both under this title and under Title III.

(b) If for any taxable year beginning after October 31, 1918, and ending prior to January 1, 1920, it appears upon the production of evidence satisfactory to the Commissioner that any taxpayer has sustained a net loss, the amount of such net loss shall under regulations prescribed by the Commissioner with the approval of the Secretary be deducted from the net income of the taxpayer for the preceding taxable year; and the taxes imposed by this title and by Title III for such preceding taxable year shall be redetermined accordingly. Any amount found to be due to the taxpayer upon the basis of such redetermination shall be credited or refunded to the taxpayer in accordance with the provisions of section 252. If such net loss is in excess of the net income for such preceding taxable year, the amount of such

excess shall under regulations prescribed by the Commissioner with the approval of the Secretary be allowed as a deduction in computing the net income for the succeeding taxable year.

(c) The benefit of this section shall be allowed to the members of a partnership and the beneficiaries of an estate or trust under regulations prescribed by the Commissioner with the approval of the Secretary.

Fiscal Year With Different Rates

SECTION 205. (a) That if a taxpayer makes return for a fiscal year beginning in 1917 and ending in 1918, his tax under this title for the first taxable year shall be the sum of: (1) The same proportion of a tax for the entire period computed under Title I of the Revenue Act of 1916 as amended by the Revenue Act of 1917 and under Title I of the Revenue Act of 1917, which the portion of such period falling within the calendar year 1917 is of the entire period, and (2) the same proportion of a tax for the entire period computed under this title at the rates for the calendar year 1918 which the portion of such period falling within the calendar year 1918 is of the entire period: *Provided*, That in the case of a personal service corporation the amount to be paid shall be only that specified in clause (1).

Any amount heretofore or hereafter paid on account of the tax imposed for such fiscal year by Title I of the Revenue Act of 1916 as amended by the Revenue Act of 1917, and by Title I of the Revenue Act of 1917, shall be credited towards the payment of the tax imposed for such fiscal year by this Act, and if the amount so paid exceeds the amount of such tax imposed by this Act, or, in the case of a personal service corporation, the amount specified in clause (1), the excess shall be credited or refunded in accordance with the provisions of section 252.

(b) If a taxpayer makes a return for a fiscal year beginning in 1918 and ending in 1919, the tax under this title for such fiscal year shall be the sum of: (1) the same proportion of a tax for the entire period computed under this title at the rates specified for the calendar year 1918 which the portion of such period falling within the calendar year 1918 is of the entire period, and

(2) the same proportion of a tax for the entire period computed under this title at the rates specified for the calendar year 1919 which the portion of such period falling within the calendar year 1919 is of the entire period.

(c) If a fiscal year of a partnership begins in 1917 and ends in 1918 or begins in 1918 and ends in 1919, then notwithstanding the provisions of subdivision (b) of section 218, (1) the rates for the calendar year during which such fiscal year begins shall apply to an amount of each partner's share of such partnership net income (determined under the law applicable to such year) equal to the proportion which the part of such fiscal year falling within such calendar year bears to the full fiscal year, and (2) the rates for the calendar year during which such fiscal year ends shall apply to an amount of each partner's share of such partnership net income (determined under the law applicable to such calendar year) equal to the proportion which the part of such fiscal year falling within such calendar year bears to the full fiscal year: *Provided*, That in the case of a personal service corporation with respect to a fiscal year beginning in 1917 and ending in 1918, the amount specified in clause (1) shall not be subject to normal tax.

Parts of Income Subject to Rates for Different Years

SECTION 206. That whenever parts of a taxpayer's income are subject to rates for different calendar years, the part subject to the rates for the most recent calendar year shall be placed in the lower brackets of the rate schedule provided in this title, the part subject to the rates for the next preceding calendar year shall be placed in the next higher brackets of the rate schedule applicable to that year, and so on until the entire net income has been accounted for. In determining the income, any deductions, exemptions or credits of a kind not plainly and properly chargeable against the income taxable at rates for a preceding year shall first be applied against the income subject to rates for the most recent calendar year; but any balance thereof shall be applied against the income subject to the rates of the next preceding year or years until fully allowed.

PART II.—INDIVIDUALS

Normal Tax

SECTION 210. That, in lieu of the taxes imposed by subdivision (a) of section 1 of the Revenue Act of 1916 and by section 1 of the Revenue Act of 1917, there shall be levied, collected, and paid for each taxable year upon the net income of every individual a normal tax, at the following rates:

(a) For the calendar year 1918, 12 per centum of the amount of the net income in excess of the credits provided in section 216: *Provided*, That in the case of a citizen or resident of the United States the rate upon the first \$4,000 of such excess amount shall be 6 per centum;

(b) For each calendar year thereafter, 8 per centum of the amount of the net income in excess of the credits provided in section 216: *Provided*, That in the case of a citizen or resident of the United States the rate upon the first \$4,000 of such excess amount shall be 4 per centum.

Surtax

SECTION 211. (a) That, in lieu of the taxes imposed by subdivision (b) of section 1 of the Revenue Act of 1916 and by section 2 of the Revenue Act of 1917, but in addition to the normal tax imposed by section 210 of this Act, there shall be levied, collected, and paid for each taxable year upon the net income of every individual, a surtax equal to the sum of the following:

1 per centum of the amount by which the net income exceeds \$5,000 and does not exceed \$6,000;

2 per centum of the amount by which the net income exceeds \$6,000 and does not exceed \$8,000;

3 per centum of the amount by which the net income exceeds \$8,000 and does not exceed \$10,000;

4 per centum of the amount by which the net income exceeds \$10,000 and does not exceed \$12,000;

5 per centum of the amount by which the net income exceeds \$12,000 and does not exceed \$14,000;

6 per centum of the amount by which the net income exceeds \$14,000 and does not exceed \$16,000;

7 per centum of the amount by which the net income exceeds \$16,000 and does not exceed \$18,000;

8 per centum of the amount by which the net income exceeds \$18,000 and does not exceed \$20,000;

9 per centum of the amount by which the net income exceeds \$20,000 and does not exceed \$22,000;

10 per centum of the amount by which the net income exceeds \$22,000 and does not exceed \$24,000;

11 per centum of the amount by which the net income exceeds \$24,000 and does not exceed \$26,000;

12 per centum of the amount by which the net income exceeds \$26,000 and does not exceed \$28,000;

13 per centum of the amount by which the net income exceeds \$28,000 and does not exceed \$30,000;

14 per centum of the amount by which the net income exceeds \$30,000 and does not exceed \$32,000;

15 per centum of the amount by which the net income exceeds \$32,000 and does not exceed \$34,000;

16 per centum of the amount by which the net income exceeds \$34,000 and does not exceed \$36,000;

17 per centum of the amount by which the net income exceeds \$36,000 and does not exceed \$38,000;

18 per centum of the amount by which the net income exceeds \$38,000 and does not exceed \$40,000;

19 per centum of the amount by which the net income exceeds \$40,000 and does not exceed \$42,000;

20 per centum of the amount by which the net income exceeds \$42,000 and does not exceed \$44,000;

21 per centum of the amount by which the net income exceeds \$44,000 and does not exceed \$46,000;

22 per centum of the amount by which the net income exceeds \$46,000 and does not exceed \$48,000;

23 per centum of the amount by which the net income exceeds \$48,000 and does not exceed \$50,000;

24 per centum of the amount by which the net income exceeds \$50,000 and does not exceed \$52,000;

25 per centum of the amount by which the net income exceeds \$52,000 and does not exceed \$54,000;

26 per centum of the amount by which the net income exceeds \$54,000 and does not exceed \$56,000;

27 per centum of the amount by which the net income exceeds \$56,000 and does not exceed \$58,000;

28 per centum of the amount by which the net income exceeds \$58,000 and does not exceed \$60,000;

29 per centum of the amount by which the net income exceeds \$60,000 and does not exceed \$62,000;

30 per centum of the amount by which the net income exceeds \$62,000 and does not exceed \$64,000;

31 per centum of the amount by which the net income exceeds \$64,000 and does not exceed \$66,000;

32 per centum of the amount by which the net income exceeds \$66,000 and does not exceed \$68,000;

33 per centum of the amount by which the net income exceeds \$68,000 and does not exceed \$70,000;

34 per centum of the amount by which the net income exceeds \$70,000 and does not exceed \$72,000;

35 per centum of the amount by which the net income exceeds \$72,000 and does not exceed \$74,000;

36 per centum of the amount by which the net income exceeds \$74,000 and does not exceed \$76,000;

37 per centum of the amount by which the net income exceeds \$76,000 and does not exceed \$78,000;

38 per centum of the amount by which the net income exceeds \$78,000 and does not exceed \$80,000;

39 per centum of the amount by which the net income exceeds \$80,000 and does not exceed \$82,000;

40 per centum of the amount by which the net income exceeds \$82,000 and does not exceed \$84,000;

41 per centum of the amount by which the net income exceeds \$84,000 and does not exceed \$86,000;

42 per centum of the amount by which the net income exceeds \$86,000 and does not exceed \$88,000;

43 per centum of the amount by which the net income exceeds \$88,000 and does not exceed \$90,000;

44 per centum of the amount by which the net income exceeds \$90,000 and does not exceed \$92,000;

45 per centum of the amount by which the net income exceeds \$92,000 and does not exceed \$94,000;

46 per centum of the amount by which the net income exceeds \$94,000 and does not exceed \$96,000;

47 per centum of the amount by which the net income exceeds \$96,000 and does not exceed \$98,000;

48 per centum of the amount by which the net income exceeds \$98,000 and does not exceed \$100,000;

52 per centum of the amount by which the net income exceeds \$100,000 and does not exceed \$150,000;

56 per centum of the amount by which the net income exceeds \$150,000 and does not exceed \$200,000;

60 per centum of the amount by which the net income exceeds \$200,000 and does not exceed \$300,000;

63 per centum of the amount by which the net income exceeds \$300,000 and does not exceed \$500,000;

64 per centum of the amount by which the net income exceeds \$500,000 and does not exceed \$1,000,000;

65 per centum of the amount by which the net income exceeds \$1,000,000.

(b) In the case of a bona fide sale of mines, oil or gas wells, or any interest therein, where the principal value of the property has been demonstrated by prospecting or exploration and discovery work done by the taxpayer, the portion of the tax imposed by this section attributable to such sale shall not exceed 20 per centum of the selling price of such property or interest.

Net Income Defined

SECTION 212. (a) That in the case of an individual the term "net income" means the gross income as defined in section 213, less the deductions allowed by section 214.

(b) The net income shall be computed upon the basis of the taxpayer's annual accounting period (fiscal year or calendar year, as the case may be) in accordance with the method of accounting regularly employed in keeping the books of such

taxpayer; but if no such method of accounting has been so employed, or if the method employed does not clearly reflect the income, the computation shall be made upon such basis and in such manner as in the opinion of the Commissioner does clearly reflect the income. If the taxpayer's annual accounting period is other than a fiscal year as defined in section 200 or if the taxpayer has no annual accounting period or does not keep books, the net income shall be computed on the basis of the calendar year.

If a taxpayer changes his accounting period from fiscal year to calendar year, from calendar year to fiscal year, or from one fiscal year to another, the net income shall, with the approval of the Commissioner, be computed on the basis of such new accounting period, subject to the provisions of section 226.

Gross Income Defined

SECTION 213. That for the purposes of this title (except as otherwise provided in section 233) the term "gross income"—

(a) Includes gains, profits, and income derived from salaries, wages, or compensation for personal service (including in the case of the President of the United States, the judges of the Supreme and inferior courts of the United States, and all other officers and employees, whether elected or appointed, of the United States, Alaska, Hawaii, or any political subdivision thereof, or the District of Columbia, the compensation received as such) of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever. The amount of all such items shall be included in the gross income for the taxable year in which received by the taxpayer, unless, under methods of accounting permitted under subdivision (b) of section 212, any such amounts are to be properly accounted for as of a different period; but

(b) Does not include the following items, which shall be exempt from taxation under this title:

(1) The proceeds of life insurance policies paid upon the death of the insured to individual beneficiaries or to the estate of the insured;

(2) The amount received by the insured as a return of premium or premiums paid by him under life insurance, endowment, or annuity contracts, either during the term or at the maturity of the term mentioned in the contract or upon surrender of the contract;

(3) The value of property acquired by gift, bequest, devise, or descent (but the income from such property shall be included in gross income);

(4) Interest upon (a) the obligations of a State, Territory, or any political subdivision thereof, or the District of Columbia; or (b) securities issued under the provisions of the Federal Farm Loan Act of July 17, 1916; or (c) the obligations of the United States or its possessions; or (d) bonds issued by the War Finance Corporation: *Provided*, That every person owning any of the obligations, securities or bonds enumerated in clauses (a), (b), (c), and (d) shall, in the return required by this title, submit a statement showing the number and amount of such obligations, securities and bonds owned by him and the income received therefrom, in such form and with such information as the Commissioner may require. In the case of obligations of the United States issued after September 1, 1917, and in the case of bonds issued by the War Finance Corporation, the interest shall be exempt only if and to the extent provided in the respective Acts authorizing the issue thereof as amended and supplemented, and shall be excluded from gross income only if and to the extent it is wholly exempt from taxation to the taxpayer both under this title and under Title III;

(5) The income of foreign governments received from investments in the United States in stocks, bonds, or other domestic securities, owned by such foreign governments, or from interest on deposits in banks in the United States of moneys belonging to such foreign governments, or from any other source within the United States;

(6) Amounts received, through accident or health insurance or under workmen's compensation acts, as compensation for personal injuries or sickness, plus the amount of any damages received whether by suit or agreement on account of such injuries or sickness;

(7) Income derived from any public utility or the exercise of any essential governmental function and accruing to any State, Territory, or the District of Columbia, or any political subdivision of a State or Territory, or income accruing to the government of any possession of the United States, or any political subdivision thereof.

Whenever any State, Territory, or the District of Columbia, or any political subdivision of a State or Territory, prior to September 8, 1916, entered in good faith into a contract with any person, the object and purpose of which is to acquire, construct, operate, or maintain a public utility, no tax shall be levied under the provisions of this title upon the income derived from the operation of such public utility, so far as the payment thereof will impose a loss or burden upon such State, Territory, District of Columbia, or political subdivision; but this provision is not intended to confer upon such person any financial gain or exemption or to relieve such person from the payment of a tax as provided for in this title upon the part or portion of such income to which such person is entitled under such contract;

(8) So much of the amount received during the present war by a person in the military or naval forces of the United States as salary or compensation in any form from the United States for active services in such forces as does not exceed \$3,500.

(c) In the case of nonresident alien individuals, gross income includes only the gross income from sources within the United States, including interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise, dividends from resident corporations, and including all amounts received (although paid under a contract for the sale of goods or otherwise) representing profits on the manufacture and disposition of goods within the United States.

Deductions Allowed

SECTION 214. (a) That in computing net income there shall be allowed as deductions:

(1) All the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including a reasonable allowance for salaries or other compensation for personal services actually rendered, and including rentals or other payments required to be made as a condition to the continued use or possession, for purposes of the trade or business, of property to which the taxpayer has not taken or is not taking title or in which he has no equity;

(2) All interest paid or accrued within the taxable year on indebtedness, except on indebtedness incurred or continued to purchase or carry obligations or securities (other than obligations of the United States issued after September 24, 1917), the interest upon which is wholly exempt from taxation under this title as income to the taxpayer, or, in the case of a nonresident alien individual, the proportion of such interest which the amount of his gross income from sources within the United States bears to the amount of his gross income from all sources within and without the United States;

(3) Taxes paid or accrued within the taxable year imposed (a) by the authority of the United States, except income, war profits and excess-profits taxes; or (b) by the authority of any of its possessions, except the amount of income, war profits and excess-profits taxes allowed as a credit under section 222; or (c) by the authority of any State or Territory, or any county, school district, municipality, or other taxing subdivision of any State or Territory, not including those assessed against local benefits of a kind tending to increase the value of the property assessed; or (d) in the case of a citizen or resident of the United States, by the authority of any foreign country, except the amount of income, war-profits and excess-profits taxes allowed as a credit under section 222; or (e) in the case of a nonresident alien individual, by the authority of any foreign country (except income, war-profits and excess-profits taxes, and taxes assessed against local benefits of a kind tending to in-

crease the value of the properly assessed), upon property or business;

(4) Losses sustained during the taxable year and not compensated for by insurance or otherwise, if incurred in trade or business;

(5) Losses sustained during the taxable year and not compensated for by insurance or otherwise, if incurred in any transaction entered into for profit, though not connected with the trade or business; but in the case of a nonresident alien individual only as to such transactions within the United States;

(6) Losses sustained during the taxable year of property not connected with the trade or business (but in the case of a nonresident alien individual only property within the United States) if arising from fires, storms, shipwreck, or other casualty, or from theft, and if not compensated for by insurance or otherwise;

(7) Debts ascertained to be worthless and charged off within the taxable year;

(8) A reasonable allowance for the exhaustion, wear and tear of property used in the trade or business, including a reasonable allowance for obsolescence;

(9) In the case of buildings, machinery, equipment, or other facilities, constructed, erected, installed, or acquired, on or after April 6, 1917, for the production of articles contributing to the prosecution of the present war, and in the case of vessels constructed or acquired on or after such date for the transportation of articles or men contributing to the prosecution of the present war, there shall be allowed a reasonable deduction for the amortization of such part of the cost of such facilities or vessels as has been borne by the taxpayer, but not again including any amount otherwise allowed under this title or previous Acts of Congress as a deduction in computing net income. At any time within three years after the termination of the present war, the Commissioner may, and at the request of the taxpayer shall, re-examine the return, and if he then finds as a result of an appraisal or from other evidence that the deduction originally allowed was incorrect, the taxes imposed by this title and by Title III for the year or years affected shall be redetermined; and the amount of tax due upon such redetermination, if any,

shall be paid upon notice and demand by the collector, or the amount of tax overpaid, if any, shall be credited or refunded to the taxpayer in accordance with the provisions of section 252;

(10) In the case of mines, oil and gas wells, other natural deposits, and timber, a reasonable allowance for depletion and for depreciation of improvements, according to the peculiar conditions in each case, based upon cost including cost of development not otherwise deducted: *Provided*, That in the case of such properties acquired prior to March 1, 1913, the fair market value of the property (or the taxpayer's interest therein) on that date shall be taken in lieu of cost up to that date: *Provided further*, That in the case of mines, oil and gas wells, discovered by the taxpayer, on or after March 1, 1913, and not acquired as the result of purchase of a proven tract or lease, where the fair market value of the property is materially disproportionate to the cost, the depletion allowance shall be based upon the fair market value of the property at the date of the discovery, or within thirty days thereafter; such reasonable allowance in all the above cases to be made under rules and regulations to be prescribed by the Commissioner with the approval of the Secretary. In the case of leases the deductions allowed by this paragraph shall be equitably apportioned between the lessor and lessee;

(11) Contributions or gifts made within the taxable year to corporations organized and operated exclusively for religious, charitable, scientific, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual, or to the special fund for vocational rehabilitation authorized by section 7 of the Vocational Rehabilitation Act, to an amount not in excess of 15 per centum of the taxpayer's net income as computed without the benefit of this paragraph. Such contributions or gifts shall be allowable as deductions only if verified under rules and regulations prescribed by the Commissioner, with the approval of the Secretary. In the case of a nonresident alien individual this deduction shall be allowed only as to contributions or gifts made to domestic corporations, or to such vocational rehabilitation fund;

(12) (a) At the time of filing return for the taxable year 1918 a taxpayer may file a claim in abatement based on the fact that he has sustained a substantial loss (whether or not actually realized by sale or other disposition) resulting from any material reduction (not due to temporary fluctuation) of the value of the inventory for such taxable year, or from the actual payment after the close of such taxable year of rebates in pursuance of contracts entered into during such year upon sales made during such year. In such case payment of the amount of the tax covered by such claim shall not be required until the claim is decided, but the taxpayer shall accompany his claim with a bond in double the amount of the tax covered by the claim, with sureties satisfactory to the Commissioner, conditioned for the payment of any part of such tax found to be due, with interest. If any part of such claim is disallowed then the remainder of the tax due shall on notice and demand by the collector be paid by the taxpayer with interest, at the rate of 1 per centum per month from the time the tax would have been due had no such claim been filed. If it is shown to the satisfaction of the Commissioner that such substantial loss has been sustained, then in computing the tax imposed by this title the amount of such loss shall be deducted from the net income. (b) If no such claim is filed, but it is shown to the satisfaction of the Commissioner that during the taxable year 1919 the taxpayer has sustained a substantial loss of the character above described then the amount of such loss shall be deducted from the net income for the taxable year 1918 and the tax imposed by this title for such year shall be redetermined accordingly. Any amount found to be due to the taxpayer upon the basis of such redetermination shall be credited or refunded to the taxpayer in accordance with the provisions of section 252.

(b) In the case of a nonresident alien individual the deductions allowed in paragraphs (1, 4, 7, 8, 9, 10, 12) and clause (e) of paragraph (3), of subdivision (a) shall be allowed only if and to the extent that they are connected with income arising from a source within the United States; and the proper apportionment and allocation of the deductions with respect to sources of income within and without the United States shall be determined under

rules and regulations prescribed by the Commissioner with the approval of the Secretary.

Items Not Deductible

SECTION 215. That in computing net income no deduction shall in any case be allowed in respect of—

- (a) Personal, living, or family expenses;
- (b) Any amount paid out for new buildings or for permanent improvements or betterments made to increase the value of any property or estate;
- (c) Any amount expended in restoring property or in making good the exhaustion thereof for which an allowance is or has been made; or
- (d) Premiums paid on any life insurance policy covering the life of any officer or employee, or of any person financially interested in any trade or business carried on by the taxpayer, when the taxpayer is directly or indirectly a beneficiary under such policy.

Credits Allowed

SECTION 216. That for the purpose of the normal tax only there shall be allowed the following credits:

- (a) The amount received as dividends from a corporation which is taxable under this title upon its net income, and amounts received as dividends from a personal service corporation out of earnings or profits upon which income tax has been imposed by Act of Congress;
- (b) The amount received as interest upon obligations of the United States and bonds issued by the War Finance Corporation, which is included in gross income under section 213;
- (c) In the case of a single person, a personal exemption of \$1,000, or in the case of the head of a family or a married person living with husband or wife, a personal exemption of \$2,000. A husband and wife living together shall receive but one personal exemption of \$2,000 against their aggregate net income; and in case they make separate returns, the personal exemption of \$2,000 may be taken by either or divided between them;

(d) \$200 for each person (other than husband or wife) dependent upon and receiving his chief support from the taxpayer, if such dependent person is under eighteen years of age or is incapable of self-support because mentally or physically defective.

(e) In the case of a nonresident alien individual who is a citizen or subject of a country which imposes an income tax, the credits allowed in subdivisions (c) and (d) shall be allowed only if such country allows a similar credit to citizens of the United States not residing in such country.

Nonresident Aliens—Allowance of Deductions and Credits

SECTION 217. That a nonresident alien individual shall receive the benefit of the deductions and credits allowed in this title only by filing or causing to be filed with the collector a true and accurate return of his total income received from all sources corporate or otherwise in the United States, in the manner prescribed by this title, including therein all the information which the Commissioner may deem necessary for the calculation of such deductions and credits: *Provided*, That the benefit of the credits allowed in subdivisions (c) and (d) of section 216 may, in the discretion of the Commissioner, and except as otherwise provided in subdivision (e) of that section, be received by filing a claim therefor with the withholding agent. In case of failure to file a return, the collector shall collect the tax on such income, and all property belonging to such nonresident alien individual shall be liable to distraint for the tax.

Partnerships and Personal Service Corporations

SECTION 218. (a) That individuals carrying on business in partnership shall be liable for income tax only in their individual capacity. There shall be included in computing the net income of each partner his distributive share, whether distributed or not, of the net income of the partnership for the taxable year, or, if his net income for such taxable year is computed upon the basis of a period different from that upon the basis of which

the net income of the partnership is computed, then his distributive share of the net income of the partnership for any accounting period of the partnership ending within the fiscal or calendar year upon the basis of which the partner's net income is computed.

The partner shall, for the purpose of the normal tax, be allowed as credits, in addition to the credits allowed to him under section 216, his proportionate share of such amounts specified in subdivisions (a) and (b) of section 216 as are received by the partnership.

(b) If a fiscal year of a partnership ends during a calendar year for which the rates of tax differ from those for the preceding calendar year, then (1) the rates for such preceding calendar year shall apply to an amount of each partner's share of such partnership net income equal to the proportion which the part of such fiscal year falling within such calendar year bears to the full fiscal year, and (2) the rates for the calendar year during which such fiscal year ends shall apply to the remainder.

(c) In the case of an individual member of a partnership which makes return for a fiscal year beginning in 1917 and ending in 1918, his proportionate share of any excess profits tax imposed upon the partnership under the Revenue Act of 1917 with respect to that part of such fiscal year falling in 1917, shall, for the purpose of determining the tax imposed by this title, be credited against that portion of the net income embraced in his personal return for the taxable year 1918 to which the rates for 1917 apply.

(d) The net income of the partnership shall be computed in the same manner and on the same basis as provided in section 212, except that the deduction provided in paragraph (11) of subdivision (a) of section 214 shall not be allowed.

(e) Personal service corporations shall not be subject to taxation under this title, but the individual stockholders thereof shall be taxed in the same manner as the members of partnerships. All the provisions of this title relating to partnerships and the members thereof shall so far as practicable apply to personal service corporations and the stockholders thereof: *Provided*, That for the purpose of this subdivision amounts

distributed by a personal service corporation during its taxable year shall be accounted for by the distributees; and any portion of the net income remaining undistributed at the close of its taxable year shall be accounted for by the stockholders of such corporation at the close of its taxable year in proportion to their respective shares.

Estates and Trusts

SECTION 219. (a) That the tax imposed by sections 210 and 211 shall apply to the income of estates or of any kind of property held in trust, including—

(1) Income received by estates of deceased persons during the period of administration or settlement of the estate;

(2) Income accumulated in trust for the benefit of unborn or unascertained persons or persons with contingent interests;

(3) Income held for future distribution under the terms of the will or trust; and

(4) Income which is to be distributed to the beneficiaries periodically, whether or not at regular intervals, and the income collected by a guardian of an infant to be held or distributed as the court may direct.

(b) The fiduciary shall be responsible for making the return of income for the estate or trust for which he acts. The net income of the estate or trust shall be computed in the same manner and on the same basis as provided in section 212, except that there shall also be allowed as a deduction (in lieu of the deduction authorized by paragraph (11) of subdivision (a) of section 214) any part of the gross income which, pursuant to the terms of the will or deed creating the trust, is during the taxable year paid to or permanently set aside for the United States, any State, Territory, or any political subdivision thereof, or the District of Columbia, or any corporation organized and operated exclusively for religious, charitable, scientific, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual; and in cases under paragraph (4) of subdivision (a) of this section the fiduciary

shall include in the return a statement of each beneficiary's distributive share of such net income, whether or not distributed before the close of the taxable year for which the return is made.

(c) In cases under paragraph (1), (2), or (3) of subdivision (a) the tax shall be imposed upon the net income of the estate or trust and shall be paid by the fiduciary, except that in determining the net income of the estate of any deceased person during the period of administration or settlement there may be deducted the amount of any income properly paid or credited to any legatee, heir or other beneficiary. In such cases the estate or trust shall, for the purpose of the normal tax, be allowed the same credits as are allowed to single persons under section 216.

(d) In cases under paragraph (4) of subdivision (a), and in the case of any income of an estate during the period of administration or settlement permitted by subdivision (c) to be deducted from the net income upon which tax is to be paid by the fiduciary, the tax shall not be paid by the fiduciary, but there shall be included in computing the net income of each beneficiary his distributive share, whether distributed or not, of the net income of the estate or trust for the taxable year, or, if his net income for such taxable year is computed upon the basis of a period different from that upon the basis of which the net income of the estate or trust is computed, then his distributive share of the net income of the estate or trust for any accounting period of such estate or trust ending within the fiscal or calendar year upon the basis of which such beneficiary's net income is computed. In such cases the beneficiary shall, for the purpose of the normal tax, be allowed as credits in addition to the credits allowed to him under section 216, his proportionate share of such amounts specified in subdivisions (a) and (b) of section 216 as are received by the estate or trust.

Profits of Corporations Taxable to Stockholders

SECTION 220. That if any corporation, however created or organized, is formed or availed of for the purpose of preventing the imposition of the surtax upon its stockholders or members

through the medium of permitting its gains and profits to accumulate instead of being divided or distributed, such corporation shall not be subject to the tax imposed by section 230, but the stockholders or members thereof shall be subject to taxation under this title in the same manner as provided in subdivision (e) of section 218 in the case of stockholders of a personal service corporation, except that the tax imposed by Title III shall be deducted from the net income of the corporation before the computation of the proportionate share of each stockholder or member. The fact that any corporation is a mere holding company, or that the gains and profits are permitted to accumulate beyond the reasonable needs of the business, shall be prima facie evidence of a purpose to escape the surtax; but the fact that the gains and profits are in any case permitted to accumulate and become surplus shall not be construed as evidence of a purpose to escape the tax in such case unless the Commissioner certifies that in his opinion such accumulation is unreasonable for the purposes of the business. When requested by the Commissioner, or any collector, every corporation shall forward to him a correct statement of such gains and profits and the names and addresses of the individuals or shareholders who would be entitled to the same if divided or distributed, and of the amounts that would be payable to each.

Payment of Tax at Source

SECTION 221. (a) That all individuals, corporations and partnerships, in whatever capacity acting, including lessees or mortgagors of real or personal property, fiduciaries, employers, and all officers and employees of the United States, having the control, receipt, custody, disposal, or payment, of interest, rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income, of any nonresident alien individual (other than income received as dividends from a corporation which is taxable under this title upon its net income, shall (except in the cases provided for in subdivision (b) and except as otherwise provided in regulations prescribed by the

Commissioner under section 217) deduct and withhold from such annual or periodical gains, profits, and income a tax equal to 8 per centum thereof: *Provided*, That the Commissioner may authorize such tax to be deducted and withheld from the interest upon any securities the owners of which are not known to the withholding agent.

(b) In any case where bonds, mortgages, or deeds of trust, or other similar obligations of a corporation contain a contract or provision by which the obligor agrees to pay any portion of the tax imposed by this title upon the obligee, or to reimburse the obligee for any portion of the tax, or to pay the interest without deduction for any tax which the obligor may be required or permitted to pay thereon or to retain therefrom under any law of the United States, the obligor shall deduct and withhold a tax equal to 2 per centum of the interest upon such bonds, mortgages, deeds of trust, or other obligations, whether such interest is payable annually or at shorter or longer periods and whether payable to a nonresident alien individual or to an individual citizen or resident of the United States or to a partnership: *Provided*, That the Commissioner may authorize such tax to be deducted and withheld in the case of interest upon any such bonds, mortgages, deeds of trust or other obligations, the owners of which are not known to the withholding agent. Such deduction and withholding shall not be required in the case of a citizen or resident entitled to receive such interest, if he files with the withholding agent on or before February 1, a signed notice in writing claiming the benefit of the credits provided in subdivisions (c) and (d) of section 216; nor in the case of a nonresident alien individual if so provided for in regulations prescribed by the Commissioner under section 217.

(c) Every individual, corporation, or partnership required to deduct and withhold any tax under this section shall make return thereof on or before March first of each year and shall on or before June 15th pay the tax to the official of the United States Government authorized to receive it. Every such individual, corporation, or partnership is hereby made liable for such tax and is hereby indemnified against the claims and demands of any individual, corporation, or partnership for the

amount of any payments made in accordance with the provisions of this section.

(d) Income upon which any tax is required to be withheld at the source under this section shall be included in the return of the recipient of such income, but any amount of tax so withheld shall be credited against the amount of income tax as computed in such return.

(e) If any tax required under this section to be deducted and withheld is paid by the recipient of the income, it shall not be re-collected from the withholding agent; nor in cases in which the tax is so paid shall any penalty be imposed upon or collected from the recipient of the income or the withholding agent for failure to return or pay the same, unless such failure was fraudulent and for the purpose of evading payment.

Credit for Taxes

SECTION 222. (a) That the tax computed under Part II of this title shall be credited with:

(1) In the case of a citizen of the United States, the amount of any income, war-profits and excess-profits taxes paid during the taxable year to any foreign country, upon income derived from sources therein, or to any possession of the United States; and

(2) In the case of a resident of the United States, the amount of any such taxes paid during the taxable year to any possession of the United States; and

(3) In the case of an alien resident of the United States who is a citizen or subject of a foreign country, the amount of any such taxes paid or accrued during the taxable year to such country, upon income derived from sources therein, if such country, in imposing such taxes, allows a similar credit to citizens of the United States residing in such country; and

(4) In the case of any such individual who is a member of a partnership or a beneficiary of an estate or trust, his proportionate share of such taxes of the partnership or the estate or trust paid during the taxable year to a foreign country or to any possession of the United States, as the case may be.

(b) If accrued taxes when paid differ from the amounts claimed as credits by the taxpayer, or if any tax paid is refunded in whole or in part, the taxpayer shall notify the Commissioner who shall redetermine the amount of the tax due under Part II of this title for the year or years affected, and the amount of tax due upon such redetermination, if any, shall be paid by the taxpayer upon notice and demand by the collector, or the amount of tax overpaid, if any, shall be credited or refunded to the taxpayer in accordance with the provisions of Section 252. In the case of such a tax accrued but not paid, the Commissioner as a condition precedent to the allowance of this credit may require the taxpayer to give a bond with sureties satisfactory to and to be approved by the Commissioner in such penal sum as the Commissioner may require, conditioned for the payment by the taxpayer of any amount of tax found due upon any such redetermination; and the bond herein prescribed shall contain such further conditions as the commissioner may require.

(c) These credits shall be allowed only if the taxpayer furnishes evidence satisfactory to the Commissioner showing the amount of income derived from sources within such foreign country or such possession of the United States, and all other information necessary for the computation of such credits.

Individual Returns

SECTION 223. That every individual having a net income for the taxable year of \$1,000 or over if single or if married and not living with husband or wife, or of \$2,000 or over if married and living with husband or wife, shall make under oath a return stating specifically the items of his gross income and the deductions and credits allowed by this title. If a husband and wife living together have an aggregate net income of \$2,000 or over, each shall make such a return unless the income of each is included in a single joint return.

If the taxpayer is unable to make his own return, the return shall be made by a duly authorized agent or by the guardian or other person charged with the care of the person or property of such taxpayer.

SECTION 224. That every partnership shall make a return for each taxable year, stating specifically the items of its gross income and the deductions allowed by this title, and shall include in the return the names and addresses of the individuals who would be entitled to share in the net income if distributed and the amount of the distributive share of each individual. The return shall be sworn to by any one of the partners.

Fiduciary Returns

SECTION 225. That every fiduciary (except receivers appointed by authority of law in possession of part only of the property of an individual) shall make under oath a return for the individual, estate or trust for which he acts (1) if the net income of such individual is \$1,000 or over if single or if married and not living with husband or wife, or \$2,000 or over if married and living with husband or wife, or (2) if the net income of such estate or trust is \$1,000 or over or if any beneficiary of such estate or trust is a nonresident alien, stating specifically the items of the gross income and the deductions and credits allowed by this title. Under such regulations as the Commissioner with the approval of the Secretary may prescribe, a return made by one of two or more joint fiduciaries and filed in the office of the collector of the district where such fiduciary resides shall be a sufficient compliance with the above requirement. The fiduciary shall make oath that he has sufficient knowledge of the affairs of such individual, estate or trust to enable him to make the return, and that the same is, to the best of his knowledge and belief, true and correct.

Fiduciaries required to make returns under this Act shall be subject to all the provisions of this Act which apply to individuals.

Returns When Accounting Period Changed

SECTION 226. That if a taxpayer, with the approval of the Commissioner, changes the basis of computing net income from fiscal year to calendar year a separate return shall be made for

the period between the close of the last fiscal year for which return was made and the following December 31. If the change is from calendar year to fiscal year, a separate return shall be made for the period between the close of the last calendar year for which return was made and the date designated as the close of the fiscal year. If the change is from one fiscal year to another fiscal year a separate return shall be made for the period between the close of the former fiscal year and the date designated as the close of the new fiscal year. If a taxpayer making his first return for income tax keeps his accounts on the basis of a fiscal year he shall make a separate return for the period between the beginning of the calendar year in which such fiscal year ends and the end of such fiscal year.

In all of the above cases the net income shall be computed on the basis of such period for which separate return is made, and the tax shall be paid thereon at the rate for the calendar year in which such period is included; and the credits provided in subdivisions (c) and (d) of section 216 shall be reduced respectively to amounts which bear the same ratio to the full credits provided in such subdivisions as the number of months in such period bears to twelve months.

Time and Place for Filing Returns

SECTION 227. (a) That returns shall be made on or before the fifteenth day of the third month following the close of the fiscal year, or, if the return is made on the basis of the calendar year, then the return shall be made on or before the fifteenth day of March. The Commissioner may grant a reasonable extension of time for filing returns whenever in his judgment good cause exists and shall keep a record of every such extension and the reason therefor. Except in the case of taxpayers who are abroad, no such extension shall be for more than six months.

(b) Returns shall be made to the collector for the district in which is located the legal residence or principal place of business of the person making the return, or, if he has no legal residence or principal place of business in the United States, then to the collector at Baltimore, Maryland.

Understatement in Returns

SECTION 228. That if the collector or deputy collector has reason to believe that the amount of any income returned is understated, he shall give due notice to the taxpayer making the return to show cause why the amount of the return should not be increased, and upon proof of the amount understated, may increase the same accordingly. Such taxpayer may furnish sworn testimony to prove any relevant facts and if dissatisfied with the decision of the collector may appeal to the Commissioner for his decision, under such rules of procedure as may be prescribed by the Commissioner with the approval of the Secretary.

PART III.—CORPORATIONS

Tax on Corporations

SECTION 230. (a) That, in lieu of the taxes imposed by section 10 of the Revenue Act of 1916, as amended by the Revenue Act of 1917, and by section 4 of the Revenue Act of 1917, there shall be levied, collected, and paid for each taxable year upon the net income of every corporation a tax at the following rates:

(1) For the calendar year 1918, 12 per centum of the amount of the net income in excess of the credits provided in section 236; and

(2) For each calendar year thereafter, 10 per centum of such excess amount.

(b) For the purposes of the Act approved March 21, 1918, entitled "An Act to provide for the operation of transportation systems while under Federal control, for the just compensation of their owners and for other purposes," five-sixths of the tax imposed by paragraph (1) of subdivision (a) and four-fifths of the tax imposed by paragraph (2) of subdivision (a) shall be treated as levied by an Act in amendment of Title I of the Revenue Act of 1917.

Conditional and Other Exemptions

SECTION 231. That the following organizations shall be exempt from taxation under this title—

- (1) Labor, agricultural, or horticultural organizations;
- (2) Mutual savings banks not having a capital stock represented by shares;
- (3) Fraternal beneficiary societies, orders, or associations, (a) operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system, and (b) providing for the payment of life, sick, accident, or other benefits to the members of such society, order, or association or their dependents;
- (4) Domestic building and loan associations and coöperative banks without capital stock organized and operated for mutual purposes and without profit;
- (5) Cemetery companies owned and operated exclusively for the benefit of their members;
- (6) Corporations organized and operated exclusively for religious, charitable, scientific, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual;
- (7) Business leagues, chambers of commerce, or boards of trade, not organized for profit and no part of the net earnings of which inures to the benefit of any private stockholder or individual;
- (8) Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare;
- (9) Clubs organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes, no part of the net earnings of which inures to the benefit of any private stockholder or member;
- (10) Farmers' or other mutual hail, cyclone, or fire insurance companies, mutual ditch or irrigation companies, mutual or coöperative telephone companies, or like organizations of a purely local character, the income of which consists solely of

assessments, dues, and fees collected from members for the sole purpose of meeting expenses;

(11) Farmers', fruit growers', or like associations, organized and operated as sales agents for the purpose of marketing the products of members and turning back to them the proceeds of sales, less the necessary selling expenses, on the basis of the quantity of produce furnished by them;

(12) Corporations organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization which itself is exempt from the tax imposed by this title;

(13) Federal land banks and national farm-loan associations as provided in section 26 of the Act approved July 17, 1916, entitled "An Act to provide capital for agricultural development, to create standard forms of investment based upon farm mortgage, to equalize rates of interest upon farm loans, to furnish a market for United States bonds, to create Government depositaries and financial agents for the United States, and for other purposes";

(14) Personal service corporations.

Net Income Defined

SECTION 232. That in the case of a corporation subject to the tax imposed by section 230 the term "net income" means the gross income as defined in section 233 less the deductions allowed by section 234, and the net income shall be computed on the same basis as is provided in subdivision (b) of section 212 or in section 226.

Gross Income Defined

SECTION 233. (a) That in the case of a corporation subject to the tax imposed by section 230 the term "gross income" means the gross income as defined in section 213, except that:

(1) In the case of life insurance companies there shall not be included in gross income such portion of any actual premium

received from any individual policyholder as is paid back or credited to or treated as an abatement of premium of such policyholder within the taxable year.

(2) Mutual marine insurance companies shall include in gross income the gross premiums collected and received by them less amounts paid for reinsurance.

(b) In the case of a foreign corporation gross income includes only the gross income from sources within the United States, including the interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise, dividends from resident corporations, and including all amounts received (although paid under a contract for the sale of goods or otherwise) representing profits on the manufacture and disposition of goods within the United States.

SECTION 234. (a) That in computing the net income of a corporation subject to the tax imposed by section 230 there shall be allowed as deductions:

(1) All the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including a reasonable allowance for salaries or other compensation for personal services actually rendered, and including rentals or other payments required to be made as a condition to the continued use or possession of property to which the corporation has not taken or is not taking title, or in which it has no equity;

(2) All interest paid or accrued within the taxable year on its indebtedness, except on indebtedness incurred or continued to purchase or carry obligations or securities (other than obligations of the United States issued after September 24, 1917) the interest upon which is wholly exempt from taxation under this title as income to the taxpayer, or, in the case of a foreign corporation, the proportion of such interest which the amount of its gross income from sources within the United States bears to the amount of its gross income from all sources within and without the United States;

(3) Taxes paid or accrued within the taxable year imposed (a) by the authority of the United States, except income, war profits and excess-profits taxes; or (b) by the authority of any of

its possessions, except the amount of income, war profits and excess-profits taxes allowed as a credit under section 238; or (c) by the authority of any State or Territory, or any county, school district, municipality, or other taxing subdivision of any State or Territory, not including those assessed against local benefits of a kind tending to increase the value of the property assessed; or (d) in the case of a domestic corporation, by the authority of any foreign country, except the amount of income, war-profits and excess-profits taxes allowed as a credit under section 238; or (e) in the case of a foreign corporation, by the authority of any foreign country (except income, war-profits and excess-profits taxes, and taxes assessed against local benefits of a kind tending to increase the value of the property assessed), upon the property or business: *Provided*, That in the case of obligors specified in subdivision (b) of section 221 no deduction for the payment of the tax imposed by this title or any other tax paid pursuant to the contract or provision referred to in that subdivision, shall be allowed;

(4) Losses sustained during the taxable year and not compensated for by insurance or otherwise;

(5) Debts ascertained to be worthless and charged off within the taxable year;

(6) Amounts received as dividends from a corporation which is taxable under this title upon its net income, and amounts received as dividends from a personal service corporation out of earnings or profits upon which income tax has been imposed by Act of Congress;

(7) A reasonable allowance for the exhaustion, wear and tear of property used in the trade or business, including a reasonable allowance for obsolescence;

(8) In the case of buildings, machinery, equipment, or other facilities, constructed, erected, installed, or acquired, on or after April 6, 1917, for the production of articles contributing to the prosecution of the present war, and in the case of vessels constructed or acquired on or after such date for the transportation of articles or men contributing to the prosecution of the present war, there shall be allowed a reasonable deduction for the amortization of such part of the cost of such facilities or vessels as has

been borne by the taxpayer, but not again including any amount otherwise allowed under this title or previous acts of Congress as a deduction in computing net income. At any time within three years after the termination of the present war the Commissioner may, and at the request of the taxpayer shall, reëxamine the return, and if he then finds as a result of an appraisal or from other evidence that the deduction originally allowed was incorrect, the taxes imposed by this title and by Title III for the year or years affected shall be redetermined; and the amount of tax due upon such redetermination, if any, shall be paid upon notice and demand by the collector, or the amount of tax overpaid, if any, shall be credited or refunded to the taxpayer in accordance with the provisions of section 252;

(9) In the case of mines, oil and gas wells, other natural deposits, and timber, a reasonable allowance for depletion and for depreciation of improvements, according to the peculiar conditions in each case, based upon cost including cost of development not otherwise deducted: *Provided*, That in the case of such properties acquired prior to March 1, 1913, the fair market value of the property (or the taxpayer's interest therein) on that date shall be taken in lieu of cost up to that date: *Provided further*, That in the case of mines, oil and gas wells, discovered by the taxpayer, on or after March 1, 1913, and not acquired as the result of purchase of a proven tract or lease, where the fair market value of the property is materially disproportionate to the cost, the depletion allowance shall be based upon the fair market value of the property at the date of the discovery, or within 30 days thereafter; such reasonable allowance in all the above cases to be made under rules and regulations to be prescribed by the Commissioner with the approval of the Secretary. In the case of leases the deductions allowed by this paragraph shall be equitably apportioned between the lessor and lessee;

(10) In the case of insurance companies, in addition to the above: (a) The net addition required by law to be made within the taxable year to reserve funds (including in the case of assessment insurance companies the actual deposit of sums with State or Territorial officers pursuant to law as additions to

guarantee or reserve funds); and (b) the sums other than dividends paid within the taxable year on policy and annuity contracts;

(11) In the case of corporations issuing policies covering life, health and accident insurance combined in one policy issued on the weekly premium payment plan continuing for life and not subject to cancellation, in addition to the above, such portion of the net addition (not required by law) made within the taxable year to reserve funds as the Commissioner finds to be required for the protection of the holders of such policies only;

(12) In the case of mutual marine insurance companies, there shall be allowed, in addition to the deductions allowed in paragraphs (1) to (10), inclusive, amounts repaid to policyholders on account of premiums previously paid by them, and interest paid upon such amounts between the ascertainment and the payment thereof;

(13) In the case of mutual insurance companies (other than mutual life or mutual marine insurance companies) requiring their members to make premium deposits to provide for losses and expenses, there shall be allowed, in addition to the deductions allowed in paragraphs (1) to (10), inclusive (unless otherwise allowed under such paragraphs), the amount of premium deposits returned to their policyholders and the amount of premium deposits retained for the payment of losses, expenses, and reinsurance reserves;

(14) (a) At the time of filing return for the taxable year 1918 a taxpayer may file a claim in abatement based on the fact that he has sustained a substantial loss (whether or not actually realized by sale or other disposition) resulting from any material reduction (not due to temporary fluctuation) of the value of the inventory for such taxable year, or from the actual payment after the close of such taxable year of rebates in pursuance of contracts entered into during such year upon sales made during such year. In such case payment of the amount of the tax covered by such claim shall not be required until the claim is decided, but the taxpayer shall accompany his claim with a bond in double the amount of the tax covered by the claim, with sureties satisfactory to the Commissioner, conditioned

for the payment of any part of such tax found to be due, with interest. If any part of such claim is disallowed then the remainder of the tax due shall on notice and demand by the Collector be paid by the taxpayer with interest at the rate of 1 per centum per month from the time the tax would have been due had no such claim been filed. If it is shown to the satisfaction of the Commissioner that such substantial loss has been sustained, then in computing the taxes imposed by this title and by Title III the amount of such loss shall be deducted from the net income. (b) If no such claim is filed, but it is shown to the satisfaction of the Commissioner that during the taxable year 1919 the taxpayer has sustained a substantial loss of the character above described then the amount of such loss shall be deducted from the net income for the taxable year 1918 and the taxes imposed by this title and by Title III for such year shall be redetermined accordingly. Any amount found to be due to the taxpayer upon the basis of such redetermination shall be credited or refunded to the taxpayer in accordance with the provisions of section 252.

(b) In the case of a foreign corporation the deduction allowed in subdivision (a), except those allowed in paragraph (2) and in clauses (a), (b), and (c) of paragraph (3), shall be allowed only if and to the extent that they are connected with income arising from a source within the United States; and the proper apportionment and allocation of the deductions with respect to sources of income within and without the United States shall be determined under rules and regulations prescribed by the Commissioner with the approval of the Secretary.

Items Not Deductible

SECTION 235. That in computing net income no deduction shall in any case be allowed in respect of any of the items specified in section 215.

Credits Allowed

SECTION 236. That for the purpose only of the tax imposed by section 230 there shall be allowed the following credits:

(a) The amount received as interest upon obligations of the United States and bonds issued by the War Finance Corporation, which is included in gross income under section 233;

(b) The amount of any taxes imposed by Title III for the same taxable year: *Provided*, That in the case of a corporation which makes return for a fiscal year beginning in 1917 and ending in 1918, in computing the tax as provided in subdivision (a) of section 205, the tax computed for the entire period under Title II of the Revenue Act of 1917 shall be credited against the net income computed for the entire period under Title I of the Revenue Act of 1916 as amended by the Revenue Act of 1917 and under Title I of the Revenue Act of 1917, and the tax computed for the entire period under Title III of this Act at the rates prescribed for the calendar year 1918 shall be credited against the net income computed for the entire period under this title; and

(c) In the case of a domestic corporation, \$2,000.

Payment of Tax At Source

SECTION 237. That in the case of foreign corporations subject to taxation under this title not engaged in trade or business within the United States and not having any office or place of business therein, there shall be deducted and withheld at the source in the same manner and upon the same items of income as is provided in section 221 a tax equal to 10 per centum thereof, and such tax shall be returned and paid in the same manner and subject to the same conditions as provided in that section: *Provided*, That in the case of interest described in subdivision (b) of that section the deduction and withholding shall be at the rate of 2 per centum.

Credit for Taxes

SECTION 238. (a) That in the case of a domestic corporation the total taxes imposed for the taxable year by this title and by Title III shall be credited with the amount of any income, war-profits and excess-profits taxes paid during the taxable year

to any foreign country, upon income derived from sources therein, or to any possession of the United States.

If accrued taxes when paid differ from the amounts claimed as credits by the corporation, or if any tax paid is refunded in whole or in part, the corporation shall at once notify the Commissioner who shall redetermine the amount of the taxes due under this title and under Title III for the year or years affected, and the amount of taxes due upon such redetermination, if any, shall be paid by the corporation upon notice and demand by the Collector, or the amount of taxes overpaid, if any, shall be credited or refunded to the corporation in accordance with the provisions of section 252. In the case of such a tax accrued but not paid, the Commissioner as a condition precedent to the allowance of this credit may require the corporation to give a bond with sureties satisfactory to and to be approved by him in such penal sum as he may require conditioned for the payment by the taxpayer of any amount of taxes found due upon any such redetermination; and the bond herein prescribed shall contain such further conditions as the Commissioner may require.

(b) This credit shall be allowed only if the taxpayer furnishes evidence satisfactory to the Commissioner showing the amount of income derived from sources within such foreign country or such possession of the United States, as the case may be, and all other information necessary for the computation of such credit.

(c) If a domestic corporation makes a return for a fiscal year beginning in 1917 and ending in 1918, only that proportion of this credit shall be allowed which the part of such period within the calendar year 1918 bears to the entire period.

Corporation Returns

SECTION 239. That every corporation subject to taxation under this title and every personal service corporation shall make a return, stating specifically the items of its gross income and the deductions and credits allowed by this title. The return shall be sworn to by the president, vice-president, or other

principal officer and by the treasurer or assistant treasurer. If any foreign corporation has no office or place of business in the United States but has an agent in the United States, the return shall be made by the agent. In cases where receivers, trustees in bankruptcy, or assignees are operating the property or business or corporations, such receivers, trustees, or assignees shall make returns for such corporations in the same manner and form as corporations are required to make returns. Any tax due on the basis of such returns made by receivers, trustees, or assignees shall be collected in the same manner as if collected from the corporations of whose business or property they have custody and control.

Returns made under this section shall be subject to the provisions of sections 226 and 228. When return is made under section 226 the credit provided in subdivision (c) of section 236 shall be reduced to an amount which bears the same ratio to the full credit therein provided as the number of months in the period for which such return is made bears to twelve months.

Consolidated Returns

SECTION 240. (a) That corporations which are affiliated within the meaning of this section shall, under regulations to be prescribed by the Commissioner with the approval of the Secretary, make a consolidated return of net income and invested capital for the purposes of this title and Title III, and the taxes thereunder shall be computed and determined upon the basis of such return: *Provided*, That there shall be taken out of such consolidated net income and invested capital, the net income and invested capital of any such affiliated corporation organized after August 1, 1914, and not successor to a then existing business, 50 per centum or more of whose gross income consists of gains, profits, commissions, or other income, derived from a government contract or contracts made between April 6, 1917, and November 11, 1918, both dates inclusive. In such case the corporation so taken out shall be separately assessed on the basis of its own invested capital and net income and the remainder of

such affiliated group shall be assessed on the basis of the remaining consolidated invested capital and net income.

In any case in which a tax is assessed upon the basis of a consolidated return, the total tax shall be computed in the first instance as a unit and shall then be assessed upon the respective affiliated corporations in such proportions as may be agreed upon among them, or, in the absence of any such agreement, then on the basis of the net income properly assignable to each. There shall be allowed in computing the income tax only one specific credit of \$2,000 (as provided in section 236); in computing the war-profits credit (as provided in section 311) only one specific exemption of \$3,000; and in computing the excess-profits credit (as provided in section 312) only one specific exemption of \$3,000.

(b) For the purpose of this section two or more domestic corporations shall be deemed to be affiliated (1) if one corporation owns directly or controls through closely affiliated interests or by a nominee or nominees substantially all the stock of the other or others, or (2) if substantially all the stock of two or more corporations is owned or controlled by the same interests.

(c) For the purposes of section 238 a domestic corporation which owns a majority of the voting stock of a foreign corporation shall be deemed to have paid the same proportion of any income, war-profits and excess-profits taxes paid (but not including taxes accrued) by such foreign corporation during the taxable year to any foreign country or to any possession of the United States upon income derived from sources without the United States, which the amount of any dividends (not deductible under section 234) received by such domestic corporation from such foreign corporation during the taxable year bears to the total taxable income of such foreign corporation upon or with respect to which such taxes were paid: *Provided*, That in no such case shall the amount of the credit for such taxes exceed the amount of such dividends (not deductible under section 234) received by such domestic corporation during the taxable year.

Time and Place for Filing Returns

SECTION 241. (a) That returns of corporations shall be made at the same time as is provided in subdivision (a) of section 227.

(b) Returns shall be made to the collector of the district in which is located the principal place of business or principal office or agency of the corporation, or, if it has no principal place of business or principal office or agency in the United States, then to the collector at Baltimore, Maryland.

PART IV.—ADMINISTRATIVE PROVISIONS

Payment of Taxes

SECTION 250. (a) That except as otherwise provided in this section and sections 221 and 237 the tax shall be paid in four installments, each consisting of one-fourth of the total amount of the tax. The first installment shall be paid at the time fixed by law for filing the return, and the second installment shall be paid on the fifteenth day of the third month, the third installment on the fifteenth day of the sixth month, and the fourth installment on the fifteenth day of the ninth month, after the time fixed by law for filing the return. Where an extension of time for filing a return is granted the time for payment of the first installment shall be postponed until the date of the expiration of the period of the extension, but the time for payment of the other installments shall not be postponed unless the Commissioner so provides in granting the extension. In any case in which the time for the payment of any installment is at the request of the taxpayer thus postponed, there shall be added as part of such installment interest thereon at the rate of $\frac{1}{2}$ of 1 per centum per month from the time it would have been due if no extension had been granted, until paid. If any installment is not paid when due, the whole amount of the tax unpaid shall become due and payable upon notice and demand by the collector.

The tax may at the option of the taxpayer be paid in a single payment instead of in installments, in which case the total

amount shall be paid on or before the time fixed by law for filing the return, or, where an extension of time for filing the return has been granted, on or before the expiration of the period of such extension.

(b) As soon as practicable after the return is filed, the Commissioner shall examine it. If it then appears that the correct amount of the tax is greater or less than that shown in the return, the installments shall be recomputed. If the amount already paid exceeds that which should have been paid on the basis of the installments as recomputed, the excess so paid shall be credited against the subsequent installments; and if the amount already paid exceeds the correct amount of the tax, the excess shall be credited or refunded to the taxpayer in accordance with the provisions of section 252.

If the amount already paid is less than that which should have been paid, the difference shall, to the extent not covered by any credits then due to the taxpayer under section 252, be paid upon notice and demand by the collector. In such case if the return is made in good faith and the understatement of the amount in the return is not due to any fault of the taxpayer, there shall be no penalty because of such understatement. If the understatement is due to negligence on the part of the taxpayer, but without intent to defraud, there shall be added as part of the tax 5 per centum of the total amount of the deficiency, plus interest at the rate of 1 per centum per month on the amount of the deficiency of each installment from the time the installment was due.

If the understatement is false or fraudulent with intent to evade the tax, then, in lieu of the penalty provided by section 3176 of the Revised Statutes, as amended, for false or fraudulent returns willfully made, but in addition to other penalties provided by law for false or fraudulent returns, there shall be added as part of the tax 50 per centum of the amount of the deficiency.

(c) If the return is made pursuant to section 3176 of the Revised Statutes as amended, the amount of tax determined to be due under such return shall be paid upon notice and demand by the collector.

(d) Except in the case of false or fraudulent returns with

intent to evade the tax, the amount of tax due under any return shall be determined and assessed by the Commissioner within five years after the return was due or was made, and no suit or proceeding for the collection of any tax shall be begun after the expiration of five years after the date when the return was due or was made. In the case of such false or fraudulent returns, the amount of tax due may be determined at any time after the return is filed, and the tax may be collected at any time after it becomes due.

(e) If any tax remains unpaid after the date when it is due, and for ten days after notice and demand by the collector, then, except in the case of estates of insane, deceased, or insolvent persons, there shall be added as part of the tax the sum of 5 per centum on the amount due but unpaid, plus interest at the rate of 1 per centum per month upon such amount from the time it became due: *Provided*, That as to any such amount which is the subject of a bona fide claim for abatement such sum of 5 per centum shall not be added and the interest from the time the amount was due until the claim is decided shall be at the rate of $\frac{1}{2}$ of 1 per centum per month.

In the case of the first installment provided for in subdivision (a) the instructions printed on the return shall be deemed sufficient notice of the date when the tax is due and sufficient demand, and the taxpayer's computation of the tax on the return shall be deemed sufficient notice of the amount due.

(f) In any case in which in order to enforce payment of a tax it is necessary for a collector to cause a warrant of distraint to be served, there shall also be added as part of the tax the sum of \$5.

(g) If the Commissioner finds that a taxpayer designs quickly to depart from the United States or to remove his property therefrom, or to conceal himself or his property therein, or to do any other act tending to prejudice or to render wholly or partly ineffectual proceedings to collect the tax for the taxable year then last past or the taxable year then current unless such proceedings be brought without delay, the Commissioner shall declare the taxable period for such taxpayer terminated at the end of the calendar month then last past and shall cause notice

of such finding and declaration to be given the taxpayer, together with a demand for immediate payment of the tax for the taxable period so declared terminated and of the tax for the preceding taxable year or so much of said tax as is unpaid, whether or not the time otherwise allowed by law for filing return and paying the tax has expired; and such taxes shall thereupon become immediately due and payable. In any action or suit brought to enforce payment of taxes made due and payable by virtue of the provisions of this subdivision the finding of the Commissioner, made as herein provided, whether made after notice to the taxpayer or not, shall be for all purposes presumptive evidence of the taxpayer's design. A taxpayer who is not in default in making any return or paying income, war profits, or excess-profits tax under any Act of Congress may furnish to the United States, under regulations to be prescribed by the Commissioner with the approval of the Secretary, security approved by the Commissioner that he will duly make the return next thereafter required to be filed and pay the tax next thereafter required to be paid. The Commissioner may approve and accept in like manner security for return and payment of taxes made due and payable by virtue of the provisions of this subdivision, provided the taxpayer has paid in full all other income, war profits, or excess-profits taxes due from him under any Act of Congress. If security is approved and accepted pursuant to the provisions of this subdivision and such further or other security with respect to the tax or taxes covered thereby is given as the Commissioner shall from time to time find necessary and require, payment of such taxes shall not be enforced by any proceedings under the provisions of this subdivision prior to the expiration of the time otherwise allowed for paying such respective taxes.

Receipts for Taxes

SECTION 251. That every collector to whom any payment of any tax is made under the provisions of this title shall upon request give to the person making such payment a full written or printed receipt, stating the amount paid and the particular

account for which such payment was made; and whenever any debtor pays taxes on account of payments made or to be made by him to separate creditors the collector shall, if requested by such debtor, give a separate receipt for the tax paid on account of each creditor in such form that the debtor can conveniently produce such receipts separately to his several creditors in satisfaction of their respective demands up to the amounts stated in the receipts; and such receipt shall be sufficient evidence in favor of such debtor to justify him in withholding from his next payment to his creditor the amount therein stated; but the creditor may, upon giving to his debtor a full written receipt acknowledging the payment to him of any sum actually paid and accepting the amount of tax paid as aforesaid (specifying the same) as a further satisfaction of the debt to that amount, require the surrender to him of such collector's receipt.

Refunds

SECTION 252. That if, upon examination of any return of income made pursuant to this Act, the Act of August 5, 1909, entitled "An Act to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes," the Act of October 3, 1913, entitled "An Act to reduce tariff duties and to provide revenue for the Government, and for other purposes," the Revenue Act of 1916, as amended, or the Revenue Act of 1917, it appears that an amount of income, war profits or excess-profits tax has been paid in excess of that properly due, then, notwithstanding the provisions of section 3228 of the Revised Statutes, the amount of the excess shall be credited against any income, war profits or excess-profits taxes, or installment thereof, then due from the taxpayer under any other return, and any balance of such excess shall be immediately refunded to the taxpayer: *Provided*, That no such credit or refund shall be allowed or made after five years from the date when the return was due, unless before the expiration of such five years a claim therefor is filed by the taxpayer.

Penalties

SECTION 253. That any individual, corporation, or partnership required under this title to pay or collect any tax, to make a return or to supply information, who fails to pay or collect such tax, to make such return, or to supply such information at the time or times required under this title, shall be liable to a penalty of not more than \$1,000. Any individual, corporation, or partnership, or any officer or employee of any corporation or member or employee of a partnership, who willfully refuses to pay or collect such tax, to make such return, or to supply such information at the time or times required under this title, or who willfully attempts in any manner to defeat or evade the tax imposed by this title, shall be guilty of a misdemeanor and shall be fined not more than \$10,000 or imprisoned for not more than one year, or both, together with the costs of prosecution.

Returns of Payments of Dividends

SECTION 254. That every corporation subject to the tax imposed by this title and every personal service corporation shall, when required by the Commissioner, render a correct return duly verified under oath, of its payments of dividends, stating the name and address of each stockholder, the number of shares owned by him, and the amount of dividends paid to him.

Returns of Brokers

SECTION 255. That every individual, corporation, or partnership doing business as a broker shall, when required by the Commissioner, render a correct return duly verified under oath, under such rules and regulations as the Commissioner, with the approval of the Secretary, may prescribe, showing the names of customers for whom such individual, corporation, or partnership has transacted any business, with such details as to the profits, losses or other information which the Commissioner may require, as to each of such customers, as will enable the Commissioner to determine whether all income tax due on profits or gains of such customers has been paid.

Information at Source

SECTION 256. That all individuals, corporations, and partnerships, in whatever capacity acting, including lessees or mortgagors of real or personal property, fiduciaries, and employers, making payment to another individual, corporation, or partnership, of interest, rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed, or determinable gains, profits, and income (other than payments described in sections 254 and 255), of \$1,000 or more in any taxable year, or, in the case of such payments made by the United States, the officers or employees of the United States having information as to such payments and required to make returns in regard thereto by the regulations hereinafter provided for, shall render a true and accurate return to the Commissioner, under such regulations and in such form and manner and to such extent as may be prescribed by him with the approval of the Secretary, setting forth the amount of such gains, profits, and income, and the name and address of the recipient of such payment.

Such returns may be required, regardless of amounts, (1) in the case of payments of interest upon bonds, mortgages, deeds of trust, or other similar obligations of corporations, and (2) in the case of collections of items (not payable in the United States) of interest upon the bonds of foreign countries and interest upon the bonds of and dividends from foreign corporations by individuals, corporations, or partnerships, undertaking as a matter of business or for profit the collection of foreign payments of such interest or dividends by means of coupons, checks, or bills of exchange.

When necessary to make effective the provisions of this section the name and address of the recipient of income shall be furnished upon demand of the individual, corporation, or partnership paying the income.

The provisions of this section shall apply to the calendar year 1918 and each calendar year thereafter, but shall not apply to the payment of interest on obligations of the United States.

Returns to be Public Records

SECTION 257. That returns upon which the tax has been determined by the Commissioner shall constitute public records; but they shall be open to inspection only upon order of the President and under rules and regulations prescribed by the Secretary and approved by the President: *Provided*, That the proper officers of any State imposing an income tax may, upon the request of the governor thereof, have access to the returns of any corporation, or to an abstract thereof showing the name and income of the corporation, at such times and in such manner as the Secretary may prescribe: *Provided further*, That all bona fide stockholders of record owning 1 per centum or more of the outstanding stock of any corporation shall, upon making request of the Commissioner, be allowed to examine the annual income returns of such corporation and of its subsidiaries. Any stockholder who pursuant to the provisions of this section is allowed to examine the return of any corporation, and who makes known in any manner whatever not provided by law the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any such return, shall be guilty of a misdemeanor and be punished by a fine not exceeding \$1,000, or by imprisonment not exceeding one year, or both.

The Commissioner shall as soon as practicable in each year cause to be prepared and made available to public inspection in such manner as he may determine, in the office of the collector in each internal-revenue district and in such other places as he may determine, lists containing the names and the post-office addresses of all individuals making income-tax returns in such district.

Publication of Statistics

SECTION 258. That the Commissioner, with the approval of the Secretary, shall prepare and publish annually statistics reasonably available with respect to the operation of the income, war profits and excess-profits tax laws, including classifications of taxpayers and of income, the amounts allowed as deductions,

exemptions, and credits, and any other facts deemed pertinent and valuable.

Collection of Foreign Items

SECTION 259. That all individuals, corporations, or partnerships undertaking as a matter of business or for profit the collection of foreign payments of interest or dividends by means of coupons, checks or bills of exchange shall obtain a license from the Commissioner and shall be subject to such regulations enabling the Government to obtain the information required under this title as the Commissioner, with the approval of the Secretary, shall prescribe; and whoever knowingly undertakes to collect such payments without having obtained a license therefor, or without complying with such regulations, shall be guilty of a misdemeanor and shall be fined not more than \$5,000, or imprisoned for not more than one year, or both.

Citizens of United States Possessions

SECTION 260. That any individual who is a citizen of any possession of the United States (but not otherwise a citizen of the United States) and who is not a resident of the United States, shall be subject to taxation under this title only as to income derived from sources within the United States, and in such case the tax shall be computed and paid in the same manner and subject to the same conditions as in the case of other persons who are taxable only as to income derived from such sources.

Porto Rico and Philippine Islands

SECTION 261. That in Porto Rico and the Philippine Islands the income tax shall be levied, assessed, collected, and paid in accordance with the provisions of the Revenue Act of 1916 as amended.

Returns shall be made and taxes shall be paid under Title I of such Act in Porto Rico or the Philippine Islands, as the case may be, by (1) every individual who is a citizen or resident of

Porto Rico or the Philippine Islands or derives income from sources therein, and (2) every corporation created or organized in Porto Rico or the Philippine Islands or deriving income from sources therein. An individual who is neither a citizen nor a resident of Porto Rico or the Philippine Islands but derives income from sources therein, shall be taxed in Porto Rico or the Philippine Islands as a nonresident alien individual, and a corporation created or organized outside Porto Rico or the Philippine Islands and deriving income from sources therein shall be taxed in Porto Rico or the Philippine Islands as a foreign corporation. For the purposes of section 216 and of paragraph (6) of subdivision (a) of section 234 a tax imposed in Porto Rico or the Philippine Islands upon the net income of a corporation shall not be deemed to be a tax under this title.

The Porto Rican or Philippine Legislature shall have power by due enactment to amend, alter, modify, or repeal the income tax laws in force in Porto Rico or the Philippine Islands, respectively.

TITLE III.—WAR-PROFITS AND EXCESS-PROFITS TAX

PART I.—GENERAL DEFINITIONS

SECTION 300. That when used in this title the terms "taxable year," "fiscal year," "personal service corporation," "paid or accrued," and "dividends" shall have the same meaning as provided for the purposes of income tax in sections 200 and 201. The first taxable year for the purposes of this title shall be the same as the first taxable year for the purposes of the income tax under Title II.

PART II.—IMPOSITION OF TAX

SECTION 301. (a) That in lieu of the tax imposed by Title II of the Revenue Act of 1917, but in addition to the other taxes imposed by this Act, there shall be levied, collected, and paid for the taxable year 1918 upon the net income of every corporation a tax equal to the sum of the following:

First Bracket

30 per centum of the amount of the net income in excess of the excess-profits credit (determined under section 312) and not in excess of 20 per centum of the invested capital;

Second Bracket

65 per centum of the amount of the net income in excess of 20 per centum of the invested capital;

Third Bracket

The sum, if any, by which 80 per centum of the amount of the net income in excess of the war-profits credit (determined under section 311) exceeds the amount of the tax computed under the first and second brackets.

(b) For the taxable year 1919 and each taxable year thereafter there shall be levied, collected, and paid upon the net income of every corporation (except corporations taxable under subdivision (c) of this section) a tax equal to the sum of the following:

First Bracket

20 per centum of the amount of the net income in excess of the excess-profits credit (determined under section 312) and not in excess of 20 per centum of the invested capital;

Second Bracket

40 per centum of the amount of the net income in excess of 20 per centum of the invested capital.

(c) For the taxable year 1919 and each taxable year thereafter there shall be levied, collected, and paid upon the net income of every corporation which derives in such year a net income of more than \$10,000 from any government contract or contracts made between April 6, 1917, and November 11, 1918, both dates inclusive, a tax equal to the sum of the following:

(1) Such a portion of a tax computed at the rates specified in subdivision (a) as the part of the net income attributable to such government contract or contracts bears to the entire net income. In computing such tax the excess-profits credit and the war-profits credit applicable to the taxable year shall be used;

(2) Such a portion of a tax computed at the rates specified in subdivision (b) as the part of the net income not attributable to such government contract or contracts bears to the entire net income.

For the purpose of determining the part of the net income attributable to such government contract or contracts, the proper apportionment and allocation of the deductions with respect to gross income derived from such government contract or contracts and from other sources, respectively, shall be determined under rules and regulations prescribed by the Commissioner with the approval of the Secretary.

(d) In any case where the full amount of the excess-profits credit is not allowed under the first bracket of subdivision (a) or (b), by reason of the fact that such credit is in excess of 20 per centum of the invested capital, the part not so allowed shall be deducted from the amount in the second bracket.

(e) For the purposes of the Act approved March 21, 1918, entitled "An Act to provide for the operation of transportation systems while under Federal control, for the just compensation of their owners and for other purposes," the tax imposed by this title shall be treated as levied by an Act in amendment of Title II of the Revenue Act of 1917.

SECTION 302. That the tax imposed by subdivision (a) of section 301 shall in no case be more than 30 per centum of the amount of the net income in excess of \$3,000 and not in excess of \$20,000, plus 80 per centum of the amount of the net income in excess of \$20,000; the tax imposed by subdivision (b) of section 301 shall in no case be more than 20 per centum of the amount of the net income in excess of \$3,000 and not in excess of \$20,000, plus 40 per centum of the amount of the net income in excess of \$20,000; and the above limitations shall apply to the taxes computed under subdivisions (a) and (b) of section 301, respectively, when used in subdivision (c) of that section. Nothing in this

section shall be construed in such manner as to increase the tax imposed by section 301.

SECTION 303. That if part of the net income of a corporation is derived (1) from a trade or business (or a branch of a trade or business) in which the employment of capital is necessary, and (2) a part (constituting not less than 30 per centum of its total net income) is derived from a separate trade or business (or a distinctly separate branch of the trade or business) which if constituting the sole trade or business would bring it within the class of "personal service corporations," then (under regulations prescribed by the Commissioner with the approval of the Secretary) the tax upon the first part of such net income shall be separately computed (allowing in such computation only the same proportionate part of the credits authorized in sections 311 and 312), and the tax upon the second part shall be the same percentage thereof as the tax so computed upon the first part is of such first part: *Provided*, That the tax upon such second part shall in no case be less than 20 per centum thereof, unless the tax upon the entire net income, if computed without benefit of this section, would constitute less than 20 per centum of such entire net income, in which event the tax shall be determined upon the entire net income, without reference to this section, as other taxes are determined under this title. The total tax computed under this section shall be subject to the limitations provided in section 302.

SECTION 304. (a) That the corporations enumerated in section 231 shall, to the extent that they are exempt from income tax under Title II, be exempt from taxation under this title.

(b) Any corporation whose net income for the taxable year is less than \$3,000 shall be exempt from taxation under this title.

(c) In the case of any corporation engaged in the mining of gold, the portion of the net income derived from the mining of gold shall be exempt from the tax imposed by this title, and the tax on the remaining portion of the net income shall be the proportion of a tax computed without the benefit of this subdivision which such remaining portion of the net income bears to the entire net income.

SECTION 305. That if a tax is computed under this title for a

period of less than twelve months, the specific exemption of \$3,000, wherever referred to in this title, shall be reduced to an amount which is the same proportion of \$3,000 as the number of months in the period is of twelve months.

PART III.—CREDITS

SECTION 310. That as used in this title the term "prewar period" means the calendar years 1911, 1912, and 1913, or, if a corporation was not in existence during the whole of such period, then as many of such years during the whole of which the corporation was in existence.

SECTION 311. (a) That the war-profits credit shall consist of the sum of:

(1) A specific exemption of \$3,000; and

(2) An amount equal to the average net income of the corporation for the prewar period, plus or minus, as the case may be, 10 per centum of the difference between the average invested capital for the prewar period and the invested capital for the taxable year. If the tax is computed for a period of less than twelve months such amount shall be reduced to the same proportion thereof as the number of months in the period is of twelve months.

(b) If the corporation had no net income for the prewar period, or if the amount computed under paragraph (2) of subdivision (a) is less than 10 per centum of its invested capital for the taxable year, then the war-profits credit shall be the sum of:

(1) A specific exemption of \$3,000; and

(2) An amount equal to 10 per centum of the invested capital for the taxable year.

(c) If the corporation was not in existence during the whole of at least one calendar year during the prewar period, then, except as provided in subdivision (d), the war-profits credit shall be the sum of:

(1) A specific exemption of \$3,000; and

(2) An amount equal to the same percentage of the invested capital of the taxpayer for the taxable year as the average

percentage of net income to invested capital, for the prewar period, of corporations engaged in a trade or business of the same general class as that conducted by the taxpayer; but such amount shall in no case be less than 10 per centum of the invested capital of the taxpayer for the taxable year. Such average percentage shall be determined by the Commissioner on the basis of data contained in returns made under Title II of the Revenue Act of 1917, and the average known as the median shall be used. If such average percentage has not been determined and published at least 30 days prior to the time when the return of the taxpayer is due, then for purposes of such return 10 per centum shall be used in lieu thereof; but such average percentage when determined shall be used for the purposes of section 250 in determining the correct amount of the tax.

(d) The war-profits credit shall be determined in the manner provided in subdivision (b) instead of in the manner provided in subdivision (c), in the case of any corporation which was not in existence during the whole of at least one calendar year during the prewar period, if (1) a majority of its stock at any time during the taxable year is owned or controlled, directly or indirectly, by a corporation which was in existence during the whole of at least one calendar year during the prewar period, or if (2) 50 per centum or more of its gross income (as computed under section 233 for income tax purposes) consists of gains, profits, commissions, or other income, derived from a government contract or contracts made between April 6, 1917, and November 11, 1918, both dates inclusive.

(e) A foreign corporation shall not be entitled to a specific exemption of \$3,000.

SECTION 312. That the excess-profits credit shall consist of a specific exemption of \$3,000 plus an amount equal to 8 per centum of the invested capital for the taxable year.

A foreign corporation shall not be entitled to the specific exemption of \$3,000.

PART IV.—NET INCOME

SECTION 320. (a) That for the purpose of this title the net income of a corporation shall be ascertained and returned—

(1) For the calendar years 1911 and 1912 upon the same basis and in the same manner as provided in section 38 of the Act entitled “An Act to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes,” approved August 5, 1909, except that taxes imposed by such section and paid by the corporation within the year shall be included;

(2) For the calendar year 1913 upon the same basis and in the same manner as provided in Section II of the Act entitled “An Act to reduce tariff duties and to provide revenue for the Government, and for other purposes,” approved October 3, 1913, except that taxes imposed by section 38 of such Act of August 5, 1909, and paid by the corporation within the year shall be included, and except that the amounts received by it as dividends upon the stock or from the net earnings of other corporations subject to the tax imposed by Section II of such Act of October 3, 1913, shall be deducted; and

(3) For the taxable year upon the same basis and in the same manner as provided for income tax purposes in Title II of this Act.

(b) The average net income for the prewar period shall be determined by dividing the number of years within that period during the whole of which the corporation was in existence into the sum of the net income for such years, even though there may have been no net income for one or more of such years.

PART V.—INVESTED CAPITAL

SECTION 325. (a) That as used in this title—

The term “intangible property” means patents, copyrights, secret processes and formulæ, good will, trade-marks, trade-brands, franchises, and other like property;

The term “tangible property” means stocks, bonds, notes, and other evidences of indebtedness, bills and accounts receiv-

able, leaseholds, and other property other than intangible property;

The term "borrowed capital" means money or other property borrowed, whether represented by bonds, notes, open accounts, or otherwise;

The term "inadmissible assets" means stocks, bonds, and other obligations (other than obligations of the United States), the dividends or interest from which is not included in computing net income, but where the income derived from such assets consists in part of gain or profit derived from the sale or other disposition thereof, or where all or part of the interest derived from such assets is in effect included in the net income because of the limitation on the deduction of interest under paragraph (2) of subdivision (a) of section 234, a corresponding part of the capital invested in such assets shall not be deemed to be inadmissible assets. The term "admissible assets" means all assets other than inadmissible assets, valued in accordance with the provisions of subdivision (a) of section 326, section 330, and section 331.

(b) For the purpose of this title, the par value of stock or shares shall, in the case of stock or shares issued at a nominal value or having no par value, be deemed to be the fair market value as of the date or dates of issue of such stock or shares.

SECTION 326. (a) That as used in this title the term "invested capital" for any year means (except as provided in subdivisions (b) and (c) of this section):

(1) Actual cash bona fide paid in for stock or shares;

(2) Actual cash value of tangible property, other than cash, bona fide paid in for stock or shares, at the time of such payment, but in no case to exceed the par value of the original stock or shares specifically issued therefor, unless the actual cash value of such tangible property at the time paid in is shown to the satisfaction of the Commissioner to have been clearly and substantially in excess of such par value, in which case such excess shall be treated as paid-in surplus: *Provided*, That the Commissioner shall keep a record of all cases in which tangible property is included in invested capital at a value in excess of the stock or shares issued therefor, containing the name and ad-

dress of each taxpayer, the business in which engaged, the amount of invested capital and net income shown by the return, the value of the tangible property at the time paid in, the par value of the stock or shares specifically issued therefor, and the amount included under this paragraph as paid-in surplus. The Commissioner shall furnish a copy of such record and other detailed information with respect to such cases when required by resolution of either House of Congress, without regard to the restrictions contained in section 257;

(3) Paid-in or earned surplus and undivided profits; not including surplus and undivided profits earned during the year;

(4) Intangible property bona fide paid in for stock or shares prior to March 3, 1917, in an amount not exceeding (a) the actual cash value of such property at the time paid in, (b) the par value of the stock or shares issued therefor, or (c) in the aggregate 25 per centum of the par value of the total stock or shares of the corporation outstanding on March 3, 1917, whichever is lowest;

(5) Intangible property bona fide paid in for stock or shares on or after March 3, 1917, in an amount not exceeding (a) the actual cash value of such property at the time paid in, (b) the par value of the stock or shares issued therefor, or (c) in the aggregate 25 per centum of the par value of the total stock or shares of the corporation outstanding at the beginning of the taxable year, whichever is lowest: *Provided*, That in no case shall the total amount included under paragraphs (4) and (5) exceed in the aggregate 25 per centum of the par value of the total stock or shares of the corporation outstanding at the beginning of the taxable year; but

(b) As used in this title the term "invested capital" does not include borrowed capital.

(c) There shall be deducted from invested capital as above defined a percentage thereof equal to the percentage which the amount of inadmissible assets is of the amount of admissible and inadmissible assets held during the taxable year.

(d) The invested capital for any period shall be the average invested capital for such period, but in the case of a corporation making a return for a fractional part of a year, it shall (except

for the purpose of paragraph (2) of subdivision (a) of section 311) be the same fractional part of such average invested capital.

The average invested capital for the prewar period shall be determined by dividing the number of years within that period during the whole of which the corporation was in existence into the sum of the average invested capital for such years.

SECTION 327.—That in the following cases the tax shall be determined as provided in section 328:

(a) Where the Commissioner is unable to determine the invested capital as provided in section 326;

(b) In the case of a foreign corporation;

(c) Where a mixed aggregate of tangible property and intangible property has been paid in for stock or for stock and bonds and the Commissioner is unable satisfactorily to determine the respective values of the several classes of property at the time of payment, or to distinguish the classes of property paid in for stock and for bonds, respectively;

(d) Where upon application by the corporation the Commissioner finds and so declares of record that the tax if determined without benefit of this section would, owing to abnormal conditions affecting the capital or income of the corporation, work upon the corporation an exceptional hardship evidenced by gross disproportion between the tax computed without benefit of this section and the tax computed by reference to the representative corporations specified in section 328. This subdivision shall not apply to any case (1) in which the tax (computed without benefit of this section) is high merely because the corporation earned within the taxable year a high rate of profits upon a normal invested capital nor (2) in which 50 per centum or more of the gross income of the corporation for the taxable year (computed under section 233 of Title II) consists of gains, profits, commissions, or other income, derived on a cost-plus basis from a government contract or contracts made between April 6, 1917, and November 11, 1918, both dates inclusive.

SECTION 328. (a) In the cases specified in section 327 the tax shall be the amount which bears the same ratio to the net income of the taxpayer (in excess of the specific exemption of \$3,000) for the taxable year, as the average tax of representative

corporations engaged in a like or similar trade or business, bears to their average net income (in excess of the specific exemption of \$3,000) for such year. In the case of a foreign corporation the tax shall be computed without deducting the specific exemption of \$3,000 either for the taxpayer or the representative corporations.

In computing the tax under this section the Commissioner shall compare the taxpayer only with representative corporations whose invested capital can be satisfactorily determined under section 326 and which are, as nearly as may be, similarly circumstanced with respect to gross income, net income, profits per unit of business transacted and capital employed, the amount and rate of war profits or excess profits, and all other relevant facts and circumstances.

(b) For the purposes of subdivision (a) the ratios between the average tax and the average net income of representative corporations shall be determined by the Commissioner in accordance with regulations prescribed by him with the approval of the Secretary.

In cases in which the tax is to be computed under this section, if the tax as computed without the benefit of this section is less than 50 per centum of the net income of the taxpayer, the installments shall in the first instance be computed upon the basis of such tax; but if the tax so computed is 50 per centum or more of the net income, the installments shall in the first instance be computed upon the basis of a tax equal to 50 per centum of the net income. In any case, the actual ratio when ascertained shall be used in determining the correct amount of the tax. If the correct amount of the tax when determined exceeds 50 per centum of the net income, any excess of the correct installments over the amounts actually paid shall on notice and demand be paid together with interest at the rate of $\frac{1}{2}$ of 1 per centum per month on such excess from the time the installment was due.

(c) The Commissioner shall keep a record of all cases in which the tax is determined in the manner prescribed in subdivision (a), containing the name and address of each taxpayer, the business in which engaged, the amount of invested capital and net income shown by the return, and the amount of invested

capital as determined under such subdivision. The Commissioner shall furnish a copy of such record and other detailed information with respect to such cases when required by resolution of either House of Congress, without regard to the restrictions contained in section 257.

PART VI.—REORGANIZATIONS

SECTION 330. That in the case of the reorganization, consolidation, or change of ownership after January 1, 1911, of a trade or business now carried on by a corporation, the corporation shall for the purposes of this title be deemed to have been in existence prior to that date, and the net income and invested capital of such predecessor trade or business for all or any part of the prewar period to the organization of the corporation now carrying on such trade or business shall be deemed to have been the net income and invested capital of such corporation.

If such predecessor trade or business was carried on by a partnership or individual the net income for the prewar period shall, under regulations prescribed by the Commissioner with the approval of the Secretary, be ascertained and returned as nearly as may be upon the same basis and in the same manner as provided for corporations in Title II, including a reasonable deduction for salary or compensation to each partner or the individual for personal services actually rendered.

In the case of the organization as a corporation before July 1, 1919, of any trade or business in which capital is a material income-producing factor and which was previously owned by a partnership or individual, the net income of such trade or business from January 1, 1918, to the date of such reorganization may at the option of the individual or partnership be taxed as the net income of a corporation is taxed under Titles II and III; in which event the net income and invested capital of such trade or business shall be computed as if such corporation had been in existence on and after January 1, 1918, and the undistributed profits or earnings of such trade or business shall not be subject to the surtax imposed in section 211, but amounts distributed on or after January 1, 1918, from the earnings of such trade or

business shall be taxed to the recipients as dividends, and all the provisions of Titles II and III relating to corporations shall, so far as practicable, apply to such trade or business: *Provided*, That this paragraph shall not apply to any trade or business the net income of which for the taxable year 1918 was less than 20 per centum of its invested capital for such year: *Provided further*, That any taxpayer who takes advantage of this paragraph shall pay the tax imposed by section 1000 of this Act and by the first subdivision of section 407 of the Revenue Act of 1916, as if such taxpayer had been a corporation on and after January 1, 1918, with a capital stock having no par value.

If any asset of the trade or business in existence both during the taxable year and any prewar year is included in the invested capital for the taxable year but is not included in the invested capital for such prewar year, or is valued on a different basis in computing the invested capital for the taxable year and such prewar year, respectively, then under rules and regulations to be prescribed by the Commissioner with the approval of the Secretary such readjustments shall be made as are necessary to place the computation of the invested capital for such prewar year on the basis employed in determining the invested capital for the taxable year.

SECTION 331. In the case of the reorganization, consolidation, or change of ownership of a trade or business, or change of ownership of property, after March 3, 1917, if an interest or control in such trade or business or property of 50 per centum or more remains in the same persons, or any of them, then no asset transferred or received from the previous owner shall, for the purpose of determining invested capital, be allowed a greater value than would have been allowed under this title in computing the invested capital of such previous owner if such asset had not been so transferred or received: *Provided*, That if such previous owner was not a corporation, then the value of any asset so transferred or received shall be taken at its cost of acquisition (at the date when acquired by such previous owner) with proper allowance for depreciation, impairment, betterment or development, but no addition to the original cost shall be made for any charge or expenditure deducted as expense or otherwise on or

after March 1, 1913, in computing the net income of such previous owner for purposes of taxation.

PART VII.—MISCELLANEOUS

SECTION 335. (a) That if a corporation (other than a personal service corporation) makes return for a fiscal year beginning in 1917 and ending in 1918, the tax for the first taxable year under this title shall be the sum of:

(1) The same proportion of a tax for the entire period computed under Title II of the Revenue Act of 1917 which the portion of such period falling within the calendar year 1917 is of the entire period, and (2) the same proportion of a tax for the entire period computed under this title at the rates specified in subdivision (a) of section 301 which the portion of such period falling within the calendar year 1918 is of the entire period.

Any amount heretofore or hereafter paid on account of the tax imposed for such fiscal year by Title II of the Revenue Act of 1917 shall be credited toward the payment of the tax imposed for such fiscal year by this title, and if the amount so paid exceeds the amount of the tax imposed by this title, the excess shall be credited or refunded to the corporation in accordance with the provisions of section 252.

(b) If a corporation makes return for a fiscal year beginning in 1918 and ending in 1919, the tax for such fiscal year under this title shall be the sum of: (1) the same proportion of a tax for the entire period computed under subdivision (a) of section 301 which the portion of such period falling within the calendar year 1918 is of the entire period, and (2) the same proportion of a tax for the entire period computed under subdivision (b) or (c) of section 301 which the portion of such period falling within the calendar year 1919 is of the entire period.

(c) If a partnership or a personal service corporation makes return for a fiscal year beginning in 1917 and ending in 1918, it shall pay the same proportion of a tax for the entire period computed under Title II of the Revenue Act of 1917 which the portion of such period falling within the calendar year 1917 is of the entire period.

Any tax paid by a partnership or personal service corporation for any period beginning on or after January 1, 1918, shall be immediately refunded to the partnership or corporation as a tax erroneously or illegally collected.

SECTION 336. That every corporation, not exempt under section 304, shall make a return for the purposes of this title. Such returns shall be made, and the taxes imposed by this title shall be paid, at the same times and places, in the same manner, and subject to the same conditions, as is provided in the case of returns and payment of income tax by corporations for the purposes of Title II, and all the provisions of that title not inapplicable, including penalties, are hereby made applicable to the taxes imposed by this title.

SECTION 337. That in the case of a bona fide sale of mines, oil or gas wells, or any interest therein, where the principal value of the property has been demonstrated by prospecting or exploration and discovery work done by the taxpayer, the portion of the tax imposed by this title attributable to such sale shall not exceed 20 per centum of the selling price of such property or interest.

TITLE XIII.—GENERAL ADMINISTRATIVE PROVISIONS

(d) (1) There is hereby created a board to be known as the "Advisory Tax Board," hereinafter called the Board, and to be composed of not to exceed six members to be appointed by the Commissioner with the approval of the Secretary. The Board shall cease to exist at the expiration of two years after the passage of this Act, or at such earlier time as the Commissioner with the approval of the Secretary may designate.

Vacancies in the membership of the Board shall be filled in the same manner as an original appointment. Any member shall be subject to removal by the Commissioner with the approval of the Secretary. The Commissioner with the approval of the Secretary shall designate the chairman of the Board. Each member shall receive an annual salary of \$9,000, payable monthly, together with actual necessary expenses when absent from the District of Columbia on official business.

(2) The Commissioner may, and on the request of any taxpayer directly interested shall, submit to the Board any question relating to the interpretation or administration of the income, war-profits or excess-profits tax laws, and the Board shall report its findings and recommendations to the Commissioner.

(3) The Board shall have its office in the Bureau of Internal Revenue in the District of Columbia. The expenses and salaries of members of the Board shall be audited, allowed, and paid out of appropriations for collecting internal revenue, in the same manner as expenses and salaries of employees of the Bureau of Internal Revenue are audited, allowed, and paid.

(4) The Board shall have the power to summon witnesses, take testimony, administer oaths and to require any person to produce books, papers, documents or other data relating to any matter under investigation by the Board. Any member of the Board may sign subpoenas and members and employees of the Bureau of Internal Revenue designated to assist the Board, when authorized by the Board, may administer oaths, examine witnesses, take testimony and receive evidence.

SECTION 1305. That all administrative, special, or stamp provisions of law, including the law relating to the assessment of taxes, so far as applicable, are hereby extended to and made a part of this Act, and every person liable to any tax imposed by this Act, or for the collection thereof, shall keep such records and render, under oath, such statements and returns, and shall comply with such regulations as the Commissioner, with the approval of the Secretary, may from time to time prescribe.

Whenever in the judgment of the Commissioner necessary he may require any person, by notice served upon him, to make a return or such statements as he deems sufficient to show whether or not such person is liable to tax.

The Commissioner, for the purpose of ascertaining the correctness of any return or for the purpose of making a return where none has been made, is hereby authorized, by any revenue agent or inspector designated by him for that purpose, to examine any books, papers, records or memoranda bearing upon the matters required to be included in the return, and may

require the attendance of the person rendering the return or of any officer or employee of such person, or the attendance of any other person having knowledge in the premises, and make take his testimony with reference to the matter required by law to be included in such return, with power to administer oaths to such person or persons.

SECTION 1309. That the Commissioner, with the approval of the Secretary, is hereby authorized to make all needful rules and regulations for the enforcement of the provisions of this Act.

SECTION 1313. That in the payment of any tax under this Act not payable by stamp a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to 1 cent.

SECTION 1314. That collectors may receive, at par with an adjustment for accrued interest, certificates of indebtedness issued by the United States and uncertified checks in payment of income, war-profits and excess-profits taxes and any other taxes payable other than by stamp, during such time and under such regulations as the Commissioner, with the approval of the Secretary, shall prescribe; but if a check so received is not paid by the bank on which it is drawn the person by whom such check has been tendered shall remain liable for the payment of the tax and for all legal penalties and additions the same as if such check had not been tendered.

SECTION 1316. (a) That section 3220 of the Revised Statutes is hereby amended to read as follows:

"Section 3220. The Commissioner of Internal Revenue, subject to regulations prescribed by the Secretary of the Treasury, is authorized to remit, refund, and pay back all taxes erroneously or illegally assessed or collected, all penalties collected without authority, and all taxes that appear to be unjustly assessed or excessive in amount, or in any manner wrongfully collected; also to repay to any collector or deputy collector the full amount of such sums of money as may be recovered against him in any court, for any internal revenue taxes collected by him, with the cost and expenses of suit; also all damages and costs recovered against any assessor, assistant assessor, collector, deputy collector, agent, or inspector, in any suit brought against

him by reason of anything done in the due performance of his official duty, and shall make report to Congress at the beginning of each regular session of Congress of all transactions under this section."

(b) Section 3225 of the Revised Statutes of the United States is hereby amended to read as follows:

"Section 3225. When a second assessment is made in case of any list, statement, or return, which in the opinion of the collector or deputy collector was false or fraudulent, or contained any understatement or undervaluation, such assessment shall not be remitted, nor shall taxes collected under such assessment be refunded, or paid back, or recovered by any suit, unless it is proved that such list, statement, or return was not wilfully false or fraudulent and did not contain any willful understatement or undervaluation."

(c) That the paragraph of section 3689 of the Revised Statutes, as amended, reading as follows:

"Refunding taxes illegally collected (internal revenue): To refund and pay back duties erroneously or illegally assessed or collected under the internal-revenue laws," is repealed from and after June 30, 1920; and the Secretary of the Treasury shall submit for the fiscal year 1921, and annually thereafter, an estimate of appropriations to refund and pay back duties or taxes erroneously or illegally assessed or collected under the internal-revenue laws, and to pay judgments, including interest and costs, rendered for taxes or penalties erroneously or illegally assessed or collected under the internal-revenue laws.

SECTION 1317. That sections 3164, 3165, 3167, 3172, 3173, and 3176 of the Revised Statutes as amended are hereby amended to read as follows:

"Section 3164. It shall be the duty of every collector of internal revenue having knowledge of any willful violation of any law of the United States relating to the revenue, within thirty days after coming into possession of such knowledge, to file with the district attorney of the district in which any fine, penalty, or forfeiture may be incurred, a statement of all the facts and circumstances of the case within his knowledge, together with the names of the witnesses, setting forth the provi-

sions of law believed to be so violated on which reliance may be had for condemnation or conviction.

"Section 3165. Every collector, deputy collector, internal-revenue agent, and internal-revenue officer assigned to duty under an internal-revenue agent, is authorized to administer oaths and to take evidence touching any part of the administration of the internal-revenue laws with which he is charged, or where such oaths and evidence are authorized by law or regulation authorized by law to be taken.

"Section 3167. It shall be unlawful for any collector, deputy collector, agent, clerk, or other officer or employee of the United States to divulge or to make known in any manner whatever not provided by law to any person the operations, style of work, or apparatus of any manufacturer or producer visited by him in the discharge of his official duties, or the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any income return, or to permit any income return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law; and it shall be unlawful for any person to print or publish in any manner whatever not provided by law any income return, or any part thereof or source of income, profits, losses, or expenditures appearing in any income return; and any offense against the foregoing provision shall be a misdemeanor and be punished by a fine not exceeding \$1,000 or by imprisonment not exceeding one year, or both, at the discretion of the court; and if the offender be an officer or employee of the United States he shall be dismissed from office or discharged from employment.

"Section 3172. Every collector shall, from time to time, cause his deputies to proceed through every part of his district and inquire after and concerning all persons therein who are liable to pay any internal-revenue tax, and all persons owning or having the care and management of any objects liable to pay tax, and to make a list of such persons and enumerate said objects.

"Section 3173. It shall be the duty of any person, partnership, firm, association, or corporation, made liable to any duty,

special tax, or other tax imposed by law, when not otherwise provided for, (1) in case of a special tax, on or before the thirty-first day of July in each year, and (2) in other cases before the day on which the taxes accrue, to make a list or return, verified by oath, to the collector or a deputy collector of the district where located, of the articles or objects, including the quantity of goods, wares, and merchandise, made or sold and charged with a tax, the several rates and aggregate amount, according to the forms and regulations to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, for which such person, partnership, firm, association, or corporation is liable: *Provided*, That if any person liable to pay any duty or tax, or owning, possessing, or having the care or management of property, goods, wares, and merchandise, articles or objects liable to pay any duty, tax, or license, shall fail to make and exhibit a list or return required by law, but shall consent to disclose the particulars of any and all the property, goods, wares, and merchandise, articles, and objects liable to pay any duty or tax, or any business or occupation liable to pay any tax as aforesaid, then, and in that case, it shall be the duty of the collector or deputy collector to make such list or return, which, being distinctly read, consented to, and signed and verified by oath by the person so owning, possessing, or having the care and management as aforesaid, may be received as the list of such person: *Provided further*, That in case no annual list or return has been rendered by such person to the collector or deputy collector as required by law, and the person shall be absent from his or her residence or place of business at the time the collector or a deputy collector shall call for the annual list or return, it shall be the duty of such collector or deputy collector to leave at such place of residence or business, with some one of suitable age and discretion, if such be present, otherwise to deposit in the nearest post office, a note or memorandum addressed to such person, requiring him or her to render to such collector or deputy collector the list or return required by law within ten days from the date of such note or memorandum, verified by oath. And if any person, on being notified or required as aforesaid, shall refuse or neglect

to render such list or return within the time required as aforesaid, or whenever any person who is required to deliver a monthly or other return of objects subject to tax fails to do so at the time required, or delivers any return which, in the opinion of the collector, is erroneous, false, or fraudulent, or contains any undervaluation or understatement, or refuses to allow any regularly authorized Government officer to examine the books of such person, firm, or corporation, it shall be lawful for the collector to summon such person, or any other person having possession, custody, or care of books of account containing entries relating to the business of such person or any other person he may deem proper, to appear before him and produce such books at a time and place named in the summons, and to give testimony or answer interrogatories, under oath, respecting any objects or income liable to tax or the returns thereof. The collector may summon any person residing or found within the State or Territory in which his district lies; and when the person intended to be summoned does not reside and can not be found within such State or Territory, he may enter any collection district where such person may be found and there make the examination herein authorized. And to this end he may there exercise all the authority which he might lawfully exercise in the district for which he was commissioned: *Provided*, That 'person,' as used in this section, shall be construed to include any corporation, joint-stock company or association, or insurance company when such construction is necessary to carry out its provisions.

"Section 3176. If any person, corporation, company, or association fails to make and file a return or list at the time prescribed by law or by regulation made under authority of law, or makes, wilfully or otherwise, a false or fraudulent return or list, the collector or deputy collector shall make the return or list from his own knowledge and from such information as he can obtain through testimony or otherwise. In any such case the Commissioner may, from his own knowledge and from such information as he can obtain through testimony or otherwise, make a return or amend any return made by a collector or deputy collector. Any return or list so made and subscribed

by the Commissioner, or by a collector or deputy collector and approved by the Commissioner, shall be *prima facie* good and sufficient for all legal purposes.

"If the failure to file a return or list is due to sickness or absence, the collector may allow such further time, not exceeding thirty days, for making and filing the return or list as he deems proper.

"The Commissioner of Internal Revenue shall determine and assess all taxes, other than stamp taxes, as to which returns or lists are so made under the provisions of this section. In case of any failure to make and file a return or list within the time prescribed by law, or prescribed by the Commissioner of Internal Revenue or the collector in pursuance of law, the Commissioner of Internal Revenue shall add to the tax 25 per centum of its amount, except that when a return is filed after such time and it is shown that the failure to file it was due to a reasonable cause and not to willful neglect, no such addition shall be made to the tax. In case a false or fraudulent return or list is willfully made, the Commissioner of Internal Revenue shall add to the tax 50 per centum of its amount.

"The amount so added to any tax shall be collected at the same time and in the same manner and as part of the tax unless the tax has been paid before the discovery of the neglect, falsity, or fraud, in which case the amount so added shall be collected in the same manner as the tax."

SECTION 1318. That if any person is summoned under this Act to appear, to testify, or to produce books, papers or other data, the district court of the United States for the district in which such person resides shall have jurisdiction by appropriate process to compel such attendance, testimony, or production of books, papers or other data.

The district courts of the United States at the instance of the United States are hereby invested with such jurisdiction to make and issue, both in actions at law and suits in equity, writs and orders of injunction, and of *ne exeat republica*, orders appointing receivers, and such other orders and process, and to render such judgments and decrees, granting in proper cases both legal and equitable relief together, as may be necessary or appropriate

for the enforcement of the provisions of this Act. The remedies hereby provided are in addition to and not exclusive of any and all other remedies of the United States in such courts or otherwise to enforce such provisions.

SECTION 1320. That wherever by the laws of the United States or regulations made pursuant thereto, any person is required to furnish any recognizance, stipulation, bond, guarantee, or undertaking, hereinafter called "penal bond," with surety or sureties, such person may, in lieu of such surety or sureties, deposit as security with the official having authority to approve such penal bond, United States Liberty bonds or other bonds of the United States in a sum equal at their par value to the amount of such penal bond required to be furnished, together with an agreement authorizing such official to collect or sell such bonds so deposited in case of any default in the performance of any of the conditions or stipulations of such penal bond. The acceptance of such United States bonds in lieu of surety or sureties required by law shall have the same force and effect as individual or corporate sureties, or certified checks, bank drafts, post-office money orders, or cash, for the penalty or amount of such penal bond. The bonds deposited hereunder, and such other United States bonds as may be substituted therefor from time to time as such security, may be deposited with the Treasurer, or an Assistant Treasurer of the United States, a Government depository, Federal Reserve bank, or member bank, which shall issue receipt therefor, describing such bonds so deposited. As soon as security for the performance of such penal bond is no longer necessary, such bonds so deposited, shall be returned to the depositor: *Provided*, That in case a person or persons supplying a contractor with labor or material as provided by the Act of Congress, approved February 24, 1905 (33 Stat., 811), entitled "An Act to amend an Act approved August thirteenth, eighteen hundred and ninety-four, entitled 'An Act for the protection of persons furnishing materials and labor for the construction of public works,'" shall file with the obligee, at any time after a default in the performance of any contract subject to said Acts, the application and affidavit therein provided, the obligee shall

not deliver to the obligor the deposited bonds nor any surplus proceeds thereof until the expiration of the time limited by said Acts for the institution of suit by such person or persons, and, in case suit shall be instituted within such time, shall hold said bonds or proceeds subject to the order of the court having jurisdiction thereof: *Provided further*, That nothing herein contained shall affect or impair the priority of the claim of the United States against the bonds deposited or any right or remedy granted by said Acts or by this section to the United States for default upon any obligation of said penal bond: *Provided further*, That all laws inconsistent with this section are hereby so modified as to conform to the provisions hereof: *And provided further*, That nothing contained herein shall affect the authority of courts over the security, where such bonds are taken as security in judicial proceedings, or the authority of any administrative officer of the United States to receive United States bonds for security in cases authorized by existing laws. The Secretary may prescribe rules and regulations necessary and proper for carrying this section into effect.

TITLE XIV.—GENERAL PROVISIONS

SECTION 1400. (a) That the following parts of Acts are hereby repealed, subject to the limitations provided in subdivision (b):

(1) The following titles of the Revenue Act of 1916:

Title I (called "Income Tax");

Title II (called "Estate Tax");

Title III (called "Munitions Manufacturers' Tax"), as amended;

Title IV (called "Miscellaneous Taxes").

(2) The following parts of the Act entitled "An Act to provide increased revenue to defray the expenses of the increased appropriations for the Army and Navy and the extensions of fortifications, and for other purposes," approved March 3, 1917:

Title III (called "Estate Tax");

Section 402 (called "Returns of Dividends").

(3) The following titles of the Revenue Act of 1917:

Title I (called "War Income Tax");

Title II (called "War Excess-Profits Tax");

Title III (called "War Tax on Beverages");

Title IV (called "War Tax on Cigars, Tobacco, and Manufactures Thereof");

Title V (called "War Tax on Facilities Furnished by Public Utilities, and Insurance");

Title VI (called "War Excise Taxes");

Title VII (called "War Tax on Admissions and Dues");

Title VIII (called "War Stamp Taxes");

Title IX (called "War Estate Tax");

Title X (called "Administrative Provisions");

Title XII (called "Income-Tax Amendments").

(b) Such parts of Acts shall remain in force for the assessment and collection of all taxes which have accrued thereunder, and for the imposition and collection of all penalties or forfeitures which have accrued and may accrue in relation to any such taxes, and except that the unexpended balance of any appropriation heretofore made and now available for the administration of any such part of an Act shall be available for the administration of this Act or the corresponding provision thereof: *Provided*, That, except as otherwise provided in this Act, no taxes shall be collected under Title I of the Revenue Act of 1916 as amended by the Revenue Act of 1917, or Title I or II of the Revenue Act of 1917, in respect to any period after December 31, 1917: *Provided further*, That the assessment and collection of all estate taxes, and the imposition and collection of all penalties or forfeitures, which have accrued under Title II of the Revenue Act of 1916 as amended by the Act entitled "An Act to provide increased revenue to defray the expenses of the increased appropriations for the Army and Navy and the extensions of fortifications, and for other purposes," approved March 3, 1917, or Title IX of the Revenue Act of 1917, shall be according to the provisions of Title IV of this Act. In the case of any tax imposed by any part of an Act herein repealed, if there is a tax imposed by this Act in lieu thereof, the provision imposing such tax shall remain in force until the corresponding tax under this Act takes effect under the provisions of this Act.

Title I of the Revenue Act of 1916 as amended by the Revenue Act of 1917 shall remain in force for the assessment and collection of the income tax in Porto Rico and the Philippine Islands, except as may be otherwise provided by their respective legislatures.

SECTION 1401. That section 1100 of the Revenue Act of 1917 is hereby repealed, to take effect on July 1, 1919, and thereafter the rate of postage on all mail matter of the first class shall be the same as the rate in force on October 2, 1917: *Provided*, That letters written and mailed by soldiers, sailors, and marines assigned to duty in a foreign country engaged in the present war may be mailed free of postage, subject to such rules and regulations as may be prescribed by the Postmaster General.

Section 1107 of such Act is hereby repealed, to take effect July 11, 1919.

SECTION 1402. That if any clause, sentence, paragraph, or part of this Act shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this Act, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment has been rendered.

SECTION 1403. That the Revenue Act of 1916 is hereby amended by adding at the end thereof a section to read as follows:

"Section 903. That this Act may be cited as the 'Revenue Act of 1916.'"

SECTION 1404. That the Revenue Act of 1917 is hereby amended by adding at the end thereof a section to read as follows:

"Section 1303. That this Act may be cited as the 'Revenue Act of 1917.'"

SECTION 1405. That this Act may be cited as the "Revenue Act of 1918."

SECTION 1408. That every person who on or after April 6, 1917, has entered into any contract, undertaking, or agreement with the United States, or with any department, bureau, officer, commission, board, or agency under the United States or acting

in its behalf, or with any other person having contract relations with the United States, for the performance of any work or the supplying of any materials or property for the use of or for the account of the United States, shall, within thirty days after a request of the Commissioner therefor, file with the Commissioner a true and correct copy of every such contract, undertaking, or agreement.

Whoever fails to comply with such request of the Commissioner shall be guilty of a misdemeanor and shall be punished by a fine of not more than \$1,000, or by imprisonment for not more than one year, or both.

The Commissioner shall (when not violative of the technical military or naval secrets of the Government) have access to all information and data relating to any such contract, undertaking, or agreement, in the possession, control or custody of any department, bureau, board, agency, officer or commission of the United States and may call upon any such department, bureau, board, agency, officer or commission for a full statement and description of any allowance for amortization, obsolescence, depreciation or loss, or of any valuation, appraisal, adjustment or final settlement, made in pursuance of any such contract, undertaking, or agreement.

SECTION 1409. That unless otherwise herein specially provided, this Act shall take effect on the day following its passage.

ALPHABETICAL TABLE OF CASES

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